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WORKING PAPERS

PARLIAMENTARY IMMUNITY IN THE MEMBER STATES OF THE EUROPEAN COMMUNITY AND IN THE EUROPEAN PARLIAMENT

Legal Affairs Series

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CONTENTS

Preliminary observations

An understanding of the European Community regulations as regards parliamentary immunity, as embodied in Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities, and Rule 5 of the Rules of Procedure of the European Parliament, requires a prior analysis of the national provisions existing in this area.

This study consists, then, of two main parts: the first part attempts to give a general view of the national legal provisions as regards immunity, describing in concise form the law applicable in each Member State and, as far as possible, the practice followed by the various national parliaments; the second part deals with the immunity enjoyed by Members of the European Parliament.

In preparing the first part of this study it became necessary to seek the collaboration of the competent services of the national parliaments. Most of these submitted their comments on, corrections or additions to the drafts sent to them in good time - and it is this kind cooperation, for which we are most grateful, that has enabled us to tackle certain points, particularly as regards parliamentary practice and precedent and the statistical data collected.

Immunity as an institution has been the subject of harsh criticism on the level of legal theory, having been called anachronistic, obsolete and contrary to fundamental principles of modern constitutional law (especially the principle of equality). These criticisms have been countered by those who argue that, despite existing anomalies - resulting, to a large extent, from the abuse of this privilege - the reasons which gave rise, in the past, to the introduction of parliamentary immunity into the modern constitutions cannot be deemed to have disappeared, although they may have changed in some respects.

This debate, which has highlighted the 'crisis' which seems to be currently affecting the institution in question, has also frequently been extended to the parliamentary arena itself, sometimes giving rise to proposals for reforms in the legislation and changes in direction of the legal decisions made by some parliaments.

This situation has also contributed towards the arousal of interest in a comparative study of parliamentary immunity.

It is not the purpose of this study to extract uniform principles and trends from the many existing systems, much less from their complex and sometimes inconsistent application. It is our intention to provide interested parties with another instrument of analysis and consideration, bringing together in a single publication, in a concise and ordered way, diverse isolated items of information which are not necessarily easily accessible, for reasons of language in particular.

On the other hand, given the general nature of this analysis, it does not deal with theoretical debates on which there is already a vast body of literature, such as those relating to the juridical nature of the institution of immunity lato sensu (subjective rights or objective legal standards establishing functional privileges) or of its dual meaning of non-liability (cause of exemption from punishment or cause of justification) and of immunity stricto sensu (institution of substantive criminal law or condition of a merely procedural nature).

Part One of this study is concerned only with the systems of immunity applicable to the members of national parliaments, although these have now become applicable, either fully or partially, to other bodies with or without a similar structure and functions (e.g. parliamentary assemblies of Regions, Autonomous Communities or "Länder"; some constitutional courts, magistrates or holders of executive power).

In addition to the collaboration, mentioned earlier, of the competent services of national parliaments, a study carried out by the Directorate-General for Research of the European Parliament in 1985 ('Parliamentary immunities in the Member States of the European Communities' - PE 104.074) has also been used as a reference document. The specific bibliographical references for each national legal system of immunities which were of most use in preparing the summaries presented are normally mentioned in the text itself or in the form of notes. A more complete bibliography is, however, given at the end of this publication.

The analysis contained in the part relating to the immunity enjoyed by Members of the European Parliament is based mainly, as might be expected, on the reports of the competent parliamentary committee.

Special reference should also be made to the excellent group of studies on parliamentary immunity prepared by the Legal Service of the European Parliament in 1990 (PE 140.196, PE 140.197, PE 140.198), which provided an excellent working basis for the drafting of this document and from which some excerpts are transcribed.

This publication takes into account, as far as possible, the situation existing at the end of 1992.

PART ONE

Parliamentary immunity in the Member States of the European Community

I - INTRODUCTION

1 - Terminology

Most national legal systems provide for dual protection of members of Parliament: non-liability for votes cast and opinions expressed while carrying out their respective duties and, as regards all other acts, prohibition of detention or criminal proceedings without the authorization of the chamber to which they belong.

The constitutions and/or legal theory of the various Member States, however, use different names to refer to these two aspects. The first aspect of immunity, for example, is called 'inviolabilidad' in Spain, 'irresponsabilité' in France and Belgium, 'irresponsabilidade' in Portugal, 'insindacabilità' in Italy, in the Federal Republic of Germany 'Indemnität' or 'Verantwortungsfreiheit' (non-liability), or 'Abstimmungs-und Redefreiheit' (freedom of voting and expression) or 'berufliche/parlamentarische Immunität' (professional or parliamentary immunity), and in the UK 'privilege' or 'freedom of speech'.

The second aspect mentioned is in turn 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 'außerberufliche/außerparlamentarische Immunität' (extra-professional or extra-parliamentary immunity), and in the UK as 'freedom from arrest'.

For the sake of simplicity we have decided for the purposes of this study to use the term 'non-liability' when referring to the first privilege and 'immunity' (in the strict sense) or 'inviolability' when referring to the second.

It should be emphasized, moreover, that this duality of concepts is of less interest with regard to three Member States: the Netherlands, the UK and Ireland.

In the Netherlands parliamentarians do not enjoy any inviolability (immunity in the strict sense), and British Members of Parliament are given scant protection in this regard, it being applicable only to measures to deprive them of freedom within the scope of civil proceedings, which is of virtually no practical interest. In

Ireland, the question of inviolability is dealt with in the same way as in the UK.

2 - Historical origin

The origins of parliamentary immunity date from the session of the English Parliament which ran from 12 January to 12 February 1397, when the House of Commons passed a bill denouncing the scandalous customs of the court of Richard II of England and the excessive financial burdens to which this gave rise. The member, Thomas Haxey, from whom the initiative for this direct act against the king and his court had come, was put on trial and sentenced to death for treason. Following pressure applied by the Commons, however, the sentence was not carried out thanks to a royal pardon.

This event gave rise within the House of Commons to the question of 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, thus found confirmation in Article 9 of the Bill of Rights of 1689 which expressly protected discussions and acts of Members of Parliament from any form of interference or contention made outside Parliament.

Freedom from arrest also has an ancient English origin, but this privilege was connected there, as already mentioned, essentially with measures to restrict personal freedom resulting from civil actions.

In France, too, after the Revolution of 1789, the need to ensure the non-liability of members of Parliament for opinions expressed by them in the exercise of their respective mandates was declared. Such non-liability was established by the famous decree of 23 June 1789, approved on a proposal by Mirabeau, which was followed by the announcement, in a decree dated 26 June 1790, of the privilege preventing the incrimination of members of the Assembly without the latter's authorization.

Through successive texts, this second type of immunity was gradually made specific, and clarified in the sense that the privilege is aimed essentially at the activity of the criminal courts and relates to any accusation, even those unconnected with the duties carried out by the member of Parliament. The Constitution of 1791, which lays down the first constitutional rule governing this immunity, already contains the essential nucleus of its system: '[Representatives of the Nation] may, for criminal acts, be arrested in flagrante delicto, or by virtue of a warrant of arrest; but the legislative body will be notified thereof without delay, and proceedings may not be continued until the legislative body has decided that charges should be brought'.

The considerably wider scope of parliamentary privileges in France, which were only partially taken from the English model, is closely bound to the position of superiority over the other bodies of the State which the National Assembly and its members acquired within

the context of the Revolution, with the exercise of powers which are a reflection of the principle of national sovereignty.

In the meantime, parliamentary immunity was being recognized, especially in the other countries of continental Europe, where the French model, with its dual aspects of non-liability/inviolability, seems to have exerted a predominant influence.

3 - Method and procedure used

We shall now analyze the systems of immunity existing and (as far as possible) practised in the twelve Member States, following the order in which they are mentioned in the Community Treaties[1].

Given the nature of this subject and as mentioned under 'Preliminary observations', all texts were submitted first to the competent services of the national parliaments. The final version presented here is, therefore, to a large extent, the result of their respective comments, criticisms and contributions. Nevertheless, in some cases, to which due reference is made, it was not possible for that collaboration to be obtained (or obtained in time).

This study has been subject to the greater or lesser relative quality or quantity of the information received, the varying degrees of development of precedents and theory existing in the various countries on this subject, and to the greater or lesser difficulty in accessing and interpreting the respective bibliographical sources. These are determining factors in the unequal way in which the analysis of each national system is set out.

It was decided to subdivide this analysis into six points: the juridical basis (constitutional and legal basis), the scope of the immunity, acts covered by immunity, the duration thereof, the procedure for waiving parliamentary immunity and, finally, parliamentary practice. In this last point, an attempt is made to provide a global view of the criteria used when applying general legal principles. Whenever possible, statistical elements are provided on the number of requests for the waiving of immunity analysed over the past few years by the various Parliaments, and on the number of requests granted or rejected.

At the end of the analysis for each country, the texts of the main national legal provisions on the subject are given in an annex.

At the end of this first part we present some general conclusions and a set of comparative tables on the main aspects of the regulation of the matter in the twelve Member States.

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[1] Alphabetical order taking into account the name of each State in its respective language.

II. THE SITUATION IN THE TWELVE MEMBER STATES OF THE EUROPEAN COMMUNITY

Belgium

I. Legal basis of parliamentary immunity

Article 44 of the Constitution establishes non-liability for opinions expressed and votes cast by members of Parliament in the performance of their duties. Article 45 establishes the inviolability of members of Parliament in criminal matters and sets out the conditions thereof[2].

Rule 93 of the Rules of Procedure of the Chamber of Deputies fixes the procedure to be followed for requests for authorization to bring proceedings against a member of the Chamber or for the suspension of proceedings already under way.

The Rules of Procedure of the Senate contain no special provisions in this respect.

II. Scope of parliamentary immunity[3]

Non-liability (Article 44 of the Constitution) safeguards members of Parliament against criminal and civil inquiries and proceedings.

An act of proceedings is any act whereby a public action is brought.

The notion of an act of inquiry is broader: it covers complaints, denunciations, enquiries, preliminary investigations, searches and seizures.

Article 45(1) of the Constitution formally prohibits the prosecution or arrest of a member of Parliament on a criminal matter during the session without the authorization of the Chamber to which he belongs. Proceedings shall be deemed to exist within the meaning of Article 45 when criminal action is brought against a member of Parliament either by a direct summons before a criminal court or by an instruction to an examining magistrate, or by the institution of a civil action or when the member of Parliament, even with his consent, is the subject of cross-examination by the Public Prosecutor or the examining magistrate or of a domiciliary visit for a criminal act attributed to him.

The authorization of the Chamber to which the member of Parliament belongs or of the President thereof is not required when the member of Parliament is to be heard as a simple witness.

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[2] If the members of Parliament are members of the Government, the procedure laid down in Articles 90 and 134 of the Constitution is applicable.

[3] Sections II and III are based broadly on Jacques Velu, 'Droit public', Vol. I, pp. 493-509, Bruylant, Brussels, 1986.

Article 45(1) of the Constitution does not prohibit the bringing of an action against a member of Parliament before a civil court on the basis of criminal acts other than those which could constitute votes cast and opinions expressed while carrying out his parliamentary mandate (immunity provided by Article 44 of the Constitution). Furthermore, Article 45(1) does not apply to 'administrative arrests' which the police force and gendarmerie may make and for which there is, generally speaking, flagrante delicto[4].

The rule laid down in Article 45(1) contains two exceptions: when there is flagrante delicto or when the acts occur outside the period of the session; in these cases, acts of prosecution and arrest may be carried out without the need for authorization.

By virtue of Article 45(3) of the Constitution, however, when a member of Parliament has been prosecuted or arrested without the authorization of the Chamber to which he belongs, this Chamber may request the suspension of the detention or of the prosecution during the session and for the entire duration thereof.

The prohibition of the civil imprisonment of a member of Parliament during the period of the session (Article 45(2) of the Constitution) has lost all practical interest. In fact, the civil imprisonment of anyone has been repealed in both civil and criminal matters (law of 31 January 1980 approving the Benelux Convention on the uniform law relating to penalty payments signed in The Hague on 26 November 1973).

Since the provisions relating to immunities are of a public nature, members of Parliament may not waive their immunity voluntarily.

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4 '...The police are therefore entitled to arrest provisionally any member of Parliament creating a disturbance of law and order on the public highway, hindering the execution of orders or regulations, or who, being in a state of inebriation, presents a danger to himself or to others...', op. cit. p. 504.

III. Acts covered by parliamentary immunity[5]

Non-liability may be claimed by a member of Parliament only for opinions expressed and votes cast while carrying out his mandate. Insults and physical violence are not, therefore, included in this concept[6].

The carrying out of parliamentary duties includes speeches made in Parliament, votes cast, the submission of written and oral questions and work as a member of a political group or a parliamentary committee of inquiry. The rule of parliamentary non-liability also applies to special missions entrusted by the Chamber of Deputies or by the Senate to certain members, such as on the occasion of a parliamentary inquiry. On the other hand, a member of Parliament will not be protected if he reproduces or distributes outside Parliament a speech made by him while carrying out his duties, if that reproduction or distribution is done outside of the latter and of the legal publication of discussions in the two Chambers.

Moreover, a member of Parliament cannot be compelled to testify in court while carrying out his mandate, either on his opinion, or on the source of the information on which he based his opinion.

Inviolability covers all acts liable to criminal proceedings - except for cases of flagrante delicto - done as part of or outside the exercising of parliamentary duties and other than those which may constitute votes cast and opinions expressed while carrying out the parliamentary mandate. The only remaining question would appear to be that of the expression 'under the criminal law' contained in Article 45(1) of the Constitution, which relates both to crimes and offences and to misdemeanours. In fact, this tends to protect the legislative power against interference from other powers likely to hinder the work of Parliament.

IV. Duration of parliamentary immunity

Non-liability protects members of Parliament from the time of announcement of the election results, in other words even before they take the oath. When the mandate expires, non-liability continues to protect them without a time limit in all matters concerning acts done by them during their mandates.

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5 See note 2.

6 'The question of whether Article 44 is applicable to the case of a member of Parliament who, during the session, insults a colleague, is the subject of much debate. As we see it, the following distinctions must be made: insult by words and insult by gestures or threats are covered by immunity if this insult does not at the same time constitute an act of violence; insult by deed or insult by gestures or threats when this insult at the same time constitutes an act of violence are not covered by immunity', op. cit. p. 498.

Inviolability can only be claimed by a member of Parliament while Parliament is in session, in other words when one or other Chamber meets. During parliamentary recesses, it is possible to bring legal action against a member of Parliament. When the session re-opens, however, the Chamber may request the suspension of the proceedings.

It should be noted that, traditionally, the session of Parliament does not end until the eve of the opening of the new annual session, which starts on the second Tuesday in October. In practice, therefore, no legal action can be brought against members of Parliament throughout the term, except when immunity is waived.

V. Procedure for waiving parliamentary immunity

Bearing in mind the fact that members of Parliament are always protected by non-liability, the procedure for waiving immunity relates only to inviolability. This may be waived, with the authorization of the Chamber to which the member of Parliament belongs, while Parliament is in session.

Authorization to bring legal action against a member of Parliament is requested in the majority of cases by the Public Prosecutor from the court of appeal within whose jurisdiction the deeds of which the member is accused are deemed to have taken place; it may also be requested by a private individual (injured party). The request, together with a statement of the deeds of which the member of Parliament is accused, must be sent to the President of the Chamber to which the member of Parliament in question belongs.

In the Chamber of Deputies, a special committee of seven members, appointed by the Chamber, on the suggestion of its President, is responsible for considering requests for authorization to bring legal action against a member or requests for the suspension of proceedings already under way. The committee may hear the member of Parliament concerned, who may appear in person or be represented by one of his colleagues.

During the debate in plenary only the rapporteur for the committee, the member of Parliament concerned or his representative, one speaker for and one speaker against the waiving of immunity may take part.

In the Senate, although there is no reason why a special committee should not be set up for that purpose (Rule 62 of the Rules of Procedure of the Senate), it is traditionally the Committee on Justice which is competent to deal with this subject.

Voting in plenary on requests for authorization to bring legal proceedings or requests for the suspension of proceedings already under way takes place by sitting and standing, unless a certain number of members (twelve in the Chamber of Deputies and ten in the

Senate) request voting by name[7]. In practice, however, the decision of the Chamber of Deputies is usually made by consensus, on the basis of the proposal of the competent committee and after a debate subject to the provisions of Rule 93(3) of the Rules of Procedure. In the Senate, the plenary passes judgment by a vote, traditionally without any debate, on the proposals of the competent committee.

When the Chambers grant authorization to bring legal proceedings, they often accompany their authorization with certain conditions: limitation of authorization to acts of investigation, impossibility of the member's being the subject of a warrant of arrest while Parliament is in session, prohibition of cross-examination on days and at times set aside for carrying out the parliamentary mandate, etc.

In the case of flagrante delicto or if the member of Parliament has been the subject of an arrest during breaks in sessions, either Chamber may request that the member of Parliament be released by virtue of his immunity.

VI. Parliamentary practice

Up until 1953, the criteria adopted by the two Chambers for granting the waiving of parliamentary immunity were quite different. The Chamber of Deputies refused to authorize proceedings when these were not justified either by fact or by law or when they were likely to hinder the normal progress of parliamentary work. The Senate, on the other hand, based its decision on an assessment of the seriousness of the facts or elements revealing an infringement. Not until 1953 did the Senate adopt in turn the criterion of the normal progress of parliamentary work.

During the period prior to and immediately following the Second World War, the two Chambers also maintained the argument that parliamentary immunity was the rule which they could only go back on in serious and exceptional circumstances.

This point of view was abandoned first by the Chamber of Deputies and only later, and not unreservedly, by the Senate. In 1959, the Chamber of Deputies formulated another point of view which the Senate did not adopt until 1973 and which, since then, has been jurisprudence in both Chambers[8].

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[7] Rule 46 of the Rules of Procedure of the House of Representatives and Rule 28 ff. of the Rules of Procedure of the Senate.

[8] See in particular Parliamentary Doc. of the House, 1958-1959 session, No. 261-1, p. 3; Parliamentary Doc. of the Senate, 1972-1973 session, No. 237, p. 2, idem; Parliamentary Doc. of the Senate, 1982-1983 session, 414, No. 1, p. 2.

According to this jurisprudence, the waiving of parliamentary immunity is refused in the following cases:

- the facts are not very serious;
- the signs of guilt are clearly insufficient;
- a political element comes to light either at the time of the proceedings or in the acts committed;
- the proceedings are likely to hinder the exercise of the political mandate.

As regards proceedings having a connection with political activity, the jurisprudence of the special committee of the Chamber of Deputies can be summarized as follows:

- the voluntary or involuntary nature of the act is not taken into consideration;

- the political nature of the grounds for the offence or the political context in which the offence occurs is taken into consideration, not the concept of 'political offence';

- and, finally, the political grounds for the act are not taken into consideration when the act involved attacks on the person and renders unacceptable any delay in the reparation of the damage caused.

The decision of each Chamber cannot be substituted for that of the judge and does not, therefore, prejudge the sentence concerning the innocence or guilt of the member of Parliament in question.

The following data were supplied by the Belgian Parliament in November 1992:

a) the Chamber of Deputies
Over the previous six years (start of the last term), the special committee had considered nine dossiers (requests for authorization to bring proceedings + requests for suspension of proceedings); in six cases authorization to bring proceedings was granted.

b) the Senate
Since 1988, the Senate has passed judgment on eleven requests. Out of this total, there were six authorizations to bring or continue proceedings, as against five refusals.

Constitution

Article 44

No Member of either Chamber may be subjected to prosecution or judicial pursuit on the basis of opinions expressed or votes cast by in the performance of his duties.

Article 45

No Member of either Chamber may, during the session period, be subjected to prosecution or arrest under the criminal law without the authorization of the Chamber concerned, except where he is found in the act of committing an offence.

No Member of either Chamber may, during the session period, be subjected to civil imprisonment without similar authorization.

The detention or prosecution of a Member of either Chamber shall be suspended during the session period and for its entire duration should the Chamber concerned so request.

Rules of Procedure of the Chamber of Deputies

Rule 93

A seven-member committee shall be set up, pursuant to Rules 11, 12 and 15, to examine requests for authorization of legal proceedings against a Member of the Chamber or requests for the suspension of proceedings already under way. The chairman and vice-chairman of this committee shall be appointed pursuant to Rule 14(2).

The committee may hear the Member concerned, who is entitled to ask for a hearing. He may arrange to be represented by a fellow Member.

In debates in plenary on a request under the first paragraph of this rule, the following only may speak: the rapporteur for the committee, the Member concerned or another Member representing him, one speaker for and one speaker against.

Denmark

I. THE LEGAL BASIS OF PARLIAMENTARY IMMUNITY

The general immunity of parliamentarians and their immunity for statements made in the Folketing are embodied in Article 57 of the Danish Constitution. Sanctions against members of the Folketing for improper statements are laid down in Rule 29(2) and (3) of the Rules of Procedure of the Folketing. Provisions on the procedure for withdrawal of parliamentary immunity are laid down in Rules 17(2) and 25 of the Rules of Procedure of the Folketing.

II. SCOPE OF PARLIAMENTARY IMMUNITY

Immunity protects members of the Folketing only against public prosecution and imprisonment and where they are not caught in flagrante delicto.

The notion 'imprisonment of any type' covers not only custodial imprisonment and imprisonment as punishment pursuant to judgment, but also loss of liberty as a response under criminal law, which is not punishment (preventive detention). Civil, personal arrest and loss of liberty as a means of compulsion are also assumed to be covered. This does not, however, apply to loss of liberty for curative purposes, especially admission to a psychiatric hospital.

Members of the Folketing are exempted from both criminal and civil jurisdiction for statements in the Folketing.

Exclusion of prosecution does not prevent legal investigations being carried out. If the prosecution was instituted before the person concerned became a member of the Folketing, the case can be forwarded for judgment. Furthermore, the member of the Folketing can agree to a fine order.

III. ACTS COVERED BY PARLIAMENTARY IMMUNITY

Immunity for statements applies only if these statements are made 'in the Folketing'. This expression does not imply a local limitation, nor is it to be assumed that it contains a limitation which only covers sessions of the Folketing. All meetings which are participated in as a member of the Folketing must be covered, but not meetings which are participated in because a person is a member of the Folketing. This means that committee meetings are covered, as party group meetings will also be, in every case in which subjects are discussed which are being, or will be, dealt with in the Folketing or its committees.

This presupposes, however, that the member in question has actively done something which indicates a desire to give his statements a broader dissemination.

If a member of the Folketing repeats what the person in question has said in Parliament, he or she is not covered by the immunity. If the member of the Folketing, in response to a question, simply refers to his earlier remarks in Parliament or does not wish to retract his earlier remarks, this is not sufficient for the protection not to apply. Nor can a member be forced to change his remarks.

IV. DURATION OF PARLIAMENTARY IMMUNITY

Freedom from liability for statements in the Folketing also applies after a person has ceased to be a member of the Folketing. However, this does not emerge expressly from Article 57(2) of the Constitution, but follows from the purpose of the provision and has always been accepted. With regard to other acts, the member of the Folketing is only protected by the immunity while the person in question is a member of the Folketing. The immunity of the member of the Folketing is in practice also assumed to apply during leave.

V. PROCEDURE FOR WAIVING OF PARLIAMENTARY IMMUNITY

If the prosecuting authorities begin a criminal case against a member of the Folketing, the Public Prosecutor refers to the Chief Public Prosecutor the question of whether a request for the waiving of immunity is to be taken further. If the Chief Public Prosecutor considers the request substantiated, he refers it to the Ministry of Justice, which makes the necessary additional arrangements if it decides that the case should be pursued.

In private criminal cases or civil actions, it is the individual private person who institutes prosecution who must take the initiative. This applies only to liability for statements under Article 57(2) of the Constitution, as Article 57(1) does not cover private action, even if this has punishment as its objective.

Requests for the waiving of parliamentary immunity are made in accordance with Article 54 of the Constitution and Rule 25 of the Rules of Procedure of the Folketing in the form of an application. In practice, applications for the waiving of immunity are addressed to the President of the Folketing, who refers the matter to the Committee on the Rules of Procedure under Rule 25 of the Rules of Procedure. The committee submits a report and recommendation for the consent of the Folketing in accordance with Article 57 of the Constitution with regard to the member in question as, in accordance with that same article, the Folketing has authority to decide whether the immunity of a member is to be waived. The recommendation of the committee is debated pursuant to Rule 17(2) of the Rules of Procedure. The division on the recommendation takes place according to the general rules set out in Rule 33(1) of the Rules of Procedure.

As immunity can only be waived following a resolution of the Folketing, the member of Parliament in question cannot independently waive his immunity.

VI. PARLIAMENTARY PRACTICE

In recent years, the Folketing has dealt with one to two cases annually on the waiving of immunity in accordance with Article 57(1) of the Constitution, that is to say requests from the Ministry of Justice for the consent of the Folketing to institute prosecution in a criminal case against a member. In every case, consent has been given (cf. comments on practice below).

A request for consent to call a member to account for statements in the Folketing (floor or committee), under Article 57(2) of the Constitution, has only been applied for two or three times in all since the implementation of the present Constitution in 1953. In no case has consent been given (cf. comments on practice below).

The Folketing follows the practice that consent is always given for criminal prosecution, in accordance with Article 57(1) of the Constitution, but consent is never given for an application to make a member liable for statements in Parliament, in line with Article 57(2).

Constitution

Article 57

No member of the Folketing can without its consent be prosecuted or subjected to imprisonment of any kind, unless he is caught in flagrante delicto. No member of the Folketing can without the consent of the Folketing be held accountable outside the Folketing for his statements in the same.

Rules of Procedure of the Folketing

Rule 17

1. Independent proposals other than bills are to be drawn up in resolution form and submitted at a sitting. Insofar as the procedure is not specifically laid down in the Rules of Procedure, the following rules apply: motions for resolutions of the Folketing are introduced, unless they come as recommendations from committees, in the same manner as bills and are given two readings according to corresponding rules which apply for the first and third readings of a bill. Motions for resolutions of the Folketing which come as recommendations from committees are given two readings according to corresponding rules which apply for the second and third readings of a bill. The provisions in Rule 12 relating to committee reading do not, however, apply. Requests for the final reading of a motion for a resolution to be postponed may not be made by less than two-fifths of members (cf. Rule 13(1)).

2. Recommendations from committees with regard to applications, including recommendations for consent according to Article 57 of the Constitution (cf. Rule 25), are given one reading with speaking times as in the second reading of a bill. The same applies to recommendations which are made in a report from the Committee on Electoral Scrutiny (cf. Rule 8(13)). Election of the Ombudsman of the Folketing (cf. Rule 7(2)(18)) takes place without debate in a session which is held at the earliest two days after the recommendation of the Committee on Legal Affairs on the matter is delivered.

Rule 25

Applications can only be submitted to the Folketing by one of its members (Article 54 of the Constitution). Also included under applications are petitions, addresses, complaints and similar approaches from persons who are not members of the Parliament. Every other application is submitted to the committee to which the person making it requests it to be submitted. If no such request is made, the President makes a decision on whether the application is to be referred to a standing or special committee or made

available for inspection by the members in the reading room of the Folketing. Applications for the consent of Parliament according to Article 57 of the Constitution are, however, always submitted to the Committee on the Rules of Procedure (cf. Rule 17(2)). Applications relating to election conditions are submitted to the Committee on Electoral Scrutiny (cf., however, Rule 1(3)), and applications relating to the Ombudsman to the Committee on Legal Affairs.

Rule 33

1. Parliament can only pass a resolution when over half the members are present and take part in voting (Article 50 of the Constitution). Members who declare that they are voting neither for nor against a proposal are considered to be taking part in the division. A resolution is passed when more have voted for than against the proposal, but with the exception of the cases mentioned in Rule 43.

2. A resolution cannot be changed during the same reading in which it is passed (cf., however, Rule 13(4)).

Germany

I. The legal basis of parliamentary immunity

Article 46 of the Basic Law contains provisions concerning the two forms of parliamentary immunity, i.e. indemnity (protection against prosecution on account of any vote cast or on account of specific statements in the Bundestag or in its committees) and immunity in the narrower sense, on the basis of which a criminal prosecution directed against a deputy, arrest or any other form of restriction of the personal liberty of a deputy cannot take place without the permission of the Bundestag.

The Rules of Procedure of the Bundestag in the version of 2 July 1980, last amended on 12 November 1990, lay down, in Rule 107, general procedural rules for the handling of immunity matters. This rule makes reference to Annex 6 to the Rules of Procedure, which includes a decision of the full Bundestag concerning the simplification of the procedure for waiving the immunity of members of the Bundestag and also procedural guidelines of the competent committee for the handling of immunity matters. Both parts of the annex are passed by the Bundestag or by the Committee on Immunities at the commencement of each legislative term.

The situation as described above relates only to members of the Bundestag. Members of the Bundesrat, which is composed of members of the Land governments, which appoint them and remove them from office, do not enjoy any parliamentary immunity.

II. Scope of parliamentary immunity

Where parliamentary indemnity is applicable, the deputy enjoys complete protection from state-imposed sanctions. This includes measures under criminal and disciplinary law, as well as measures concerned with civil rights and actions at civil law (the latter including in particular injunction applications and actions for compensation).

The exemption covers any liability to prosecution on the part of the deputy on account of votes cast by him and statements made by him in a plenary session or in the committees of the Bundestag (personal ground of exemption from punishment in the sense of an absolute prohibition upon the initiation and implementation of criminal proceedings and the execution of a sentence). The indemnity has the effect of excluding only the liability to prosecution and not the unlawfulness of the act or the guilt of the deputy.

Where parliamentary immunity is applicable, the deputy enjoys protection against prosecution under criminal and disciplinary law; in principle, this also covers inquiries and investigatory

proceedings whose purpose is to examine a significant accusation under criminal or disciplinary law.

At the commencement of each new legislative term, the Bundestag approves, in the aforementioned decision according to Annex 6 to the Rules of Procedure, the implementation of preliminary proceedings relating to punishable offences with the exception of insults of a political nature, on condition that the Bundestag has received from the prosecuting authorities notification of the intended initiation of preliminary proceedings. This general approval under immunity law, which is not related to previously known individual cases, is granted only for the period and procedural stage of the criminal law inquiries. Following completion of the inquiries, the competent prosecuting authorities must either notify the Bundestag of the cessation of the inquiries or request from the Bundestag permission to implement the criminal proceedings (i.e.: a charge before the competent court).

Criminal proceedings against a member of the Bundestag before a competent court may be brought only with the permission of the Bundestag. Such permission is granted only in respect of an individual instance of criminal proceedings, with its specific accusation under criminal law.

The deputy has no protection against the implementation of civil actions, as the civil judge does not 'prosecute'. This also applies to a suit for contractual penalties or the preparation of executory measures. The enforcement of executory measures, which then restricts the personal liberty of the deputy, does, however, require the permission of the Bundestag.

In addition to criminal prosecution, any other form of restriction of the personal liberty of the member of parliament by state authorities is also prohibited.

III. Acts covered by parliamentary immunity

By virtue of his indemnity, the deputy cannot be subjected to any proceedings on account of a statement or vote in the Bundestag or its committees. Statements made outside the Bundestag or its committees or statements in writing outside Bundestag publications are not subject to the ground of exemption from punishment under indemnity. A deputy is also not protected by indemnity if he commits defamation within the meaning of the German Penal Code. Accordingly, a deputy who against his better judgement asserts or disseminates with respect to another deputy an untrue circumstance which is liable to belittle the latter, disparage him in public opinion or jeopardize his standing can be prosecuted under criminal law if the required permission under immunity law is granted.

Immunity in the narrower sense extends to all punishable offences which are prosecuted under criminal law by reference to an Act. It also extends to all other restrictions of the personal liberty of a deputy. In these cases, the permission of the Bundestag is

required if state authorities wish to call the deputy concerned to account. The permission of the Bundestag is not required where he is apprehended in the commission of a punishable offence or in the course of the following day.

IV. Duration of parliamentary immunity

Indemnity commences upon the acceptance of the mandate by the deputy, but no earlier than the date of constitution of the Bundestag; it continues without limit of time.

Immunity in the narrower sense is effective for the entire duration of the mandate, i.e. with effect from the acceptance of election, but no earlier than the date of constitution of the Bundestag, to the end of the mandate of a deputy, and thus expires no later than the expiry of the legislative term. If the deputy is re-elected, the prosecuting authorities must reapply to the Bundestag for permission under immunity law.

V. Procedure for waiving parliamentary immunity

The following shall be entitled to request that immunity be waived:

a) the public prosecutor's officers, courts, civil rights and professional disciplinary courts under public law and trade and professional associations exercising supervision by virtue of the law;

b) in private proceedings, the court, before it opens the main proceedings under Section 383 of the Code of Criminal Procedure;

c) a creditor in executory proceedings, where the court cannot act without his request;

d) the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure.

Where the Bundestag has given its approval, for the duration of a legislative term, to a preliminary investigation concerning members of the Bundestag for punishable offences, the President of the Bundestag and, in so far as this will not impede the process of ascertaining the facts, the member of the Bundestag concerned shall be notified before the proceedings are initiated; if the member of the Bundestag is not notified, the President shall be advised of the fact and the reasons therefor. The right of the Bundestag to demand the suspension of proceedings (paragraph 4 of section 46 of the Basic Law) remains unaffected.

The requests of the public prosecutor's officers and courts are passed to the President of the Bundestag through the normal channels via the Federal Minister of Justice who submits them with

a request for a decision as to whether permission will be given to prosecute or restrict the personal liberty of a member of the Bundestag or to take any other measure contemplated. The creditor in executory proceedings may address his request direct to the Bundestag.

The execution of a sentence of imprisonment or coercive detention requires the permission of the Bundestag. To simplify matters, the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure is instructed to make a preliminary decision as to permission to execute; in the case of sentences of imprisonment, however, only where a sentence of this type not higher than three months is imposed. This preliminary decision is notified in writing to the Bundestag by the President, without being placed on the agenda. It is deemed to be a decision of the Bundestag unless an objection thereto is lodged within seven days following such notification.

In matters of immunity the member of the Bundestag concerned is not to be given leave to speak on the subject; no request made by him for the waiving of his immunity is entertained.

VI. Parliamentary practice

The Bundestag in principle approves the implementation of criminal prosecutions against deputies. Preliminary proceedings are generally approved at the commencement of the legislative term. The bringing of charges before courts requires the permission of the Bundestag in each individual case.

The only exception to the basic practice of the Bundestag of waiving immunity exists in the case of so-called political insults. Political insults are defamatory acts which the deputy commits in connection with the execution of his mandate. In the case of political insults, it is necessary to obtain the permission of the Bundestag in each individual case, even for the commencement of preliminary proceedings. However, according to the practice of the Bundestag, permission for a criminal prosecution is not granted in such cases.

The legal institution of the '<u>fumus persecutionis</u>' is unknown to German immunity law. However, there are some indications that this legal concept is gaining ground in relation to so-called political insults. However, the stage has already been reached where this is no longer the case in relation to punishable offences connected with political demonstrations.

The objective of the immunity practice of the Bundestag is to treat deputies and other citizens on the same basis as far as possible in criminal proceedings. The right of immunity is not understood as being a privilege for deputies, but as the prerogative of Parliament in its entirety; consequently, slurs on the functional capability and reputation of Parliament by other state authorities are to be prevented. Permission for the implementation of criminal

proceedings will be granted even where the reputation of an individual member of Parliament could be diminished thereby.

When examining immunity cases, the Bundestag does not enter upon an appraisal of the evidence. However, it does examine the conclusiveness of the case presented by the prosecuting authorities. It gives permission only where the competent prosecuting authority unmistakably proclaims its desire to bring a charge; the immunity of a deputy is not waived merely by way of a precautionary measure just in case a prosecuting authority might shortly decide that a charge is required.

A statistical survey of the immunity cases derived from the 8th to 10th legislative terms will be found in the attached extract from the German Bundestag Handbook 1980-1987. Statistical material is not yet available in printed form for the now expired 11th legislative term of the German Bundestag: the data reproduced here were obtained from the competent department of the Bundestag.

The corresponding compilation of the immunity cases handled by the Bundestag in the 1st to 7th legislative terms will be found in the Bundestag Handbook 1949-1982 on page 906. For information on earlier legislative terms, cf. also chapter 29 (Parliamentary and Election Statistics 1949-1987) in the Handbook for 1980-1987.

ANNEX 1

Compilation of the immunity cases handled by the Bundestag in the 8th, 9th, 10th and 11th legislative terms

	8th legislative term 1976-80	9th legislative term 1980-83	10th legislative term 1983-87	11th legislative term 1987-90
Immunity cases (total)	26	11	63	43
- approved	17	5	60	37
- not approved	8	4	3	4
- not processed or discontinued	1	2	0	2
Offences involving statements (Sections 185 ff. of the Penal Code)	11	5	7	7
- approved	2	1	4	3
- not approved	8	4	3	4
- not processed	1	0	0	0
Traffic offences	10	2	4	5
- approved	10	2	4	5
General criminal offences	5	2	47	27
- approved	5	2	47	27
Disciplinary proceedings (proceedings before tribunals)	0	0	3	-
- approved	0	0	3	-
Execution of a sentence	0	0	0	-
Detention to compel the giving of the oath of disclosure	0	1	0	1
- unfounded	0	1	0	1
Other restrictions of personal liberty (detention before trial, enforced appearance in court)	0	0	0	-
Examination of witnesses	0	1	0	-
- approved	0	0	0	-
- unfounded	0	1	0	-
Other cases				3
- approved	0	0	2	2
- unfounded	0	0	2	1
Number of deputies affected	25	12	63	32

Basic Law

Article 46

(Indemnity and immunity of deputies)

1. A deputy may not at any time be prosecuted in the courts or subjected to disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a statement made by him in the bundestag or any of its committees. This shall not apply to defamatory insults.

2. A deputy may not be called to account or arrested for a punishable offence except by permission of the Bundestag, unless he is apprehended in the commission of the offence or in the course of the following day.

3. The permission of the Bundestag shall also be necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18.

4. Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty shall be suspended upon the request of the Bundestag.

Rules of Procedure of the Bundestag

Rule 107

Immunities

1. Requests concerning immunity shall be transmitted direct by the President to the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure.

2. This committee shall lay down principles on the treatment of requests to waive the immunity of members of the Bundestag (Annex 6) and shall use them as the basis for any motions it has to draw up from case to case for submission to the Bundestag.

3. The debate on a motion shall not be subject to a time limit. It shall commence no sooner than the third day after it has been tabled (Rule 75(1h)). If a motion has not yet been distributed it shall be read out.

4. If the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure has not yet been constituted, the President may submit motions on questions of immunity direct to the Bundestag.

Annex 6 of the Rules of Procedure of the German Bundestag

Decision of the Bundestag relating to the waiver of immunity of Members of the Bundestag[9]

1. The Bundestag shall grant permission, up to the end of this electoral term, for preliminary investigation to be conducted against Members of the Bundestag for criminal offenses, with the exception of insulting statements of a political nature (Sections 185, 1986, and 1987 a, paragraph (1) of the Penal Code).

   In such cases preliminary investigations may be initiated at the earliest 48 hours after notification of the President of the German Bundestag.

   [Before preliminary investigations are initiated, the President of the Bundestag, and, insofar as this does not impede the process of ascertaining the truth, the Member of the Bundestag concerned shall be informed; if the Member of the Bundestag is not informed, the President shall likewise be advised of the fact and of the reasons therefor. The right of the Bundestag to demand the suspension of proceedings (Article 46, paragraph (4) of the Basic Laws) shall remain unaffected.

2. This permission shall not cover

   a) the institution of criminal proceedings for a criminal offence and the request for the issue of an order of summary penalty or a fine;

   b) in proceedings pursuant to the Regulatory Offenses Act, the statement by the court that a decision on the offence may also be taken on the basis of a penal law (Section 81, paragraph (1), second sentence of the Regulatory Offenses Acts),

   c) measures taken in the course of a preliminary investigation and involving a deprivation or restriction of liberty.

3. To simplify procedure, the Committee for the Scrutiny of Elections, Immunity, and the Rules of Procedures shall be instructed to take a preliminary decision on permission in the cases specified in Number 2 relating to traffic offenses.

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9 This decision is adopted as it stands by the German Bundestag at the beginning of each electoral term.

The same shall apply to criminal offenses which, in the opinion of the Committee for the Scrutiny of Elections, Immunity, and the Rules of Procedure, are to be regarded as petty offenses.

Authorization to prosecute under Section 194, paragraph (4) of the Penal Code in cases of insulting statements about the Bundestag may be granted by way of a preliminary decision.

If, at the beginning of an electoral term, criminal proceedings are to be continued against a Member of the Bundestag against whom the Bundestag already permitted criminal proceedings to be conducted in the previous electoral term, the necessary permission may be granted by way of a preliminary decision.

4. The enforcement of a sentence of imprisonment or of coercive detention (Sections 96 and 97 of the Regulatory Offenses Act) shall require the permission of the Bundestag. To simplify procedure, the Committee for the Scrutiny of Elections, Immunity, and the Rules of Procedure shall be instructed to take a preliminary decision on the permission required, in the case of sentences of imprisonment, this shall, however, apply only where a sentence not exceeding three months has been imposed, or, in the case of accumulation of sentences (Sections 53 and 55 of Criminal Procedure), where none of the individual sentences imposed exceeds three months.

5. If permission has been granted for the execution of a search or seizure ordered in respect of a Member of the Bundestag, the President shall make this permission conditional on another Member of the Bundestag being present when the coercive measure is executed and - if it is to be executed on the premises of the Bundestag - on an additional representative of the President being present; the Member of the Bundestag shall be appointed by the President in consultation with the chairman of the parliamentary group of the Member of the Bundestag in respect of whom permission for the execution of coercive measures has been granted.

6. The Committee for the Scrutiny of Elections, Immunity, and the Rules of Procedure may, by way of a preliminary decision, prompt the Bundestag to demand that proceedings be suspended pursuant to Article 46, paragraph (4) of the Basic Law.

7. As regards preliminary decisions, the decisions taken by the Committee for the Scrutiny of Elections, Immunity, and the Rules of Procedure shall be notified in writing to the Bundestag by the President, without being placed on the agenda. They shall be deemed to be decisions of the Bundestag, unless an objection is lodged in writing with the President within seven days of notification.

Principles relating to immunities and cases of permission granted under paragraph 3 of Section 50 of the Code of Criminal Procedure and paragraph 3 of Section 382 of the Code of Civil Procedure as well as authorizations under paragraph 2 of Section 90b and paragraph 4 of Section 194 of the Penal Code[10])

A. Principles relating to immunities

1. Entitlement to make a request

The following are entitled to make a request for the waiving of immunity:

a) the public prosecutor's officers, courts, civil rights and professional disciplinary courts under public law and trade and professional associations exercising supervision by virtue of the law,

b) in private proceedings, the court, before it opens the main proceedings under Section 383 of the Code of Criminal Procedure,

c) a creditor in executory proceedings, where the court cannot act without his request,

d) the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure.

2. Notification to the President of the Bundestag and filing of requests

a) Where the Bundestag has given its approval, for the duration of a legislative term, to a preliminary investigation concerning members of the Bundestag for punishable offences, the President of the Bundestag and, insofar as this will not impede the process of ascertaining the facts, the member of the Bundestag concerned shall be notified before the proceedings are initiated; if the member of the Bundestag is not notified, the President shall be advised of the fact and the reasons therefor. The right of the Bundestag to demand the suspension of proceedings (Section 46(4) of the Basic Law) shall remain unaffected.

b) The requests of the public prosecutor's officers and courts shall be passed to the President of the Bundestag through the normal channels via the Federal Minister of Justice who shall submit them with a request for a decision as to whether permission will be given to prosecute or restrict the personal liberty of a member of the Bundestag or to take any other measure contemplated.

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10 The principles according to paragraph 2 of Section 107 are resolved upon by the Committee on the Scrutiny of Elections, Immunity and Rules of Procedure, at the commencement of each legislative term.

c) The creditor (see paragraph 1(c) above) may address his request direct to the Bundestag.

3. Position of the member of the Bundestag concerned

In matters of immunity the member of the Bundestag concerned shall not be given leave to speak on the subject; no request made by him for the waiving of his immunity shall be entertained.

4. Appraisal of evidence

The Bundestag shall not enter into an appraisal of the evidence.

The privilege of immunity is intended to safeguard the smooth functioning and good name of the Bundestag. The decision to maintain or waive immunity is a political one and, by its very nature, must not entail involvement in a pending action directed at the ascertaining of right or wrong, guilt or innocence. The essence of the political decision referred to lies in distinguishing between the interests of Parliament and those of the other sovereign authorities. There can therefore be no question of entering into an appraisal of the evidence for or against the commission of an offence.

5. Insults of a political nature

As a rule, insults of a political nature shall not entail the waiving of immunity.

In preparing a decision as to whether a request shall be made for permission to initiate criminal proceedings, the public prosecutor's office may notify the member of the Bundestag of the charge and leave it to him to express his views thereon. The findings of the public prosecutor's office as to the character of the person filing the charge, and any other circumstances having an important bearing on assessing the gravity of a charge, do not entail any 'calling to account' within the meaning of Article 46(2) of the Basic Law.

Article 46(1) of the Basic Law lays down that a member of the Bundestag may not be called to account either in the courts or through disciplinary action for a vote cast or statement made by him in the Bundestag or any of its committees, except in the case of defamatory insults (indemnity). This means, however, that criminal proceedings shall not be taken against him on the ground,

for example, of a mere insulting statement made by him in Parliament. From this it follows that where a mere insulting statement is made outside the Bundestag, immunity shall likewise not be waived if the insult is of a political nature and not defamatory. An insulting statement made by a member of the Bundestag as a witness before a committee of investigation shall also be deemed to have occurred 'outside the Bundestag', since a member of the Bundestag is on the same footing as any other citizen called as a witness.

6. Arrest of a member of the Bundestag in the commission of an offence

Where a member of the Bundestag is arrested in the commission of an offence or in the course of the following day, the initiation of criminal proceedings against him or his arrest shall not require the permission of the Bundestag, provided that such a step is taken 'in the course of the following day' (Article 46(2) of the Basic Law).

In the event of previous release and failure to deal with the matter on the following day, a new warrant for his appearance in court or for his arrest shall again require the permission of the Bundestag; otherwise this would amount to a restriction of personal liberty (Article 46(2) of the Basic Law) in no way connected with arrest in flagrante delicto.

7. Arrest of a member of the Bundestag

(a) The permission granted for the duration of a legislative term to bring preliminary proceedings against members of the Bundestag on account of punishable offences and permission to bring public suit on account of a punishable offence does not imply permission to arrest him (Article 46(2) of the Basic Law) or to make him the subject of an enforced appearance in court.

(b) Arrest (Article 46(2) of the Basic Law) means only preventive detention; arrest for the purpose of executing a sentence shall again require special permission.

(c) Permission to make an arrest implies permission to issue a warrant for appearance in court.

(d) Permission to issue such a warrant does not imply permission to make an arrest.

8. Execution of sentences of imprisonment or coercive detention (Sections 96 and 97 of the Law relating to Offences against Public Order-OWiG)

Permission to initiate criminal proceedings does not imply the right to execute a sentence of imprisonment.

The execution of a sentence of imprisonment or coercive detention (Sections 96 and 97 of the Law relating to Offences against Public Order) requires the permission of the German Bundestag. To simplify matters, the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure shall be instructed to make a preliminary decision as to permission to execute; in the case of sentences of imprisonment, however, only where a sentence of this type not higher than three months is imposed, or in the case of cumulation of sentences (Sections 53 and 75 of the Penal Code, Section 460 of the Code of Criminal Procedure) where none of the individual sentences imposed exceeds three months.

9. Disciplinary proceedings

The waiving of immunity for the purpose of taking disciplinary proceedings shall not apply to criminal proceedings initiated by the public prosecutor in the same case. Conversely, the waiving of immunity for the purpose of instituting criminal proceedings shall not apply to disciplinary proceedings.

No further permission is required from the Bundestag for the execution of disciplinary penalties.

10. Proceedings before tribunals and professional disciplinary courts

Proceedings before tribunals and professional disciplinary courts under public law may be initiated only after immunity has been waived.

11. Proceedings in respect of traffic offences

Permission shall be granted in principle in the case of traffic offences. To simplify matters, the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure shall be instructed to make a preliminary decision in all such cases.

12. Proceedings in respect of petty offences

In the case of requests which, in the opinion of the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure, relate to a petty offence, the committee shall be instructed to make a preliminary decision (paragraph 13).

13. Simplified proceedings (preliminary decisions)

Where, by virtue of authorizations granted to it (paragraphs 8, 11, 12, B and C), the committee has made a preliminary decision, this shall be notified in writing to the Bundestag through the President, without being placed on the agenda. If no objection is raised within seven days of its notification, the decision shall be deemed to be a decision of the Bundestag.

14. Need for permission in special cases

The permission of the Bundestag shall be required:

(a) for enforcement of custody to compel an omission or tacit sufferance (Section 890 of the Code of Civil Procedure)

Where a judgment or interim order directed at an omission or tacit sufferance embodies the threat of a penalty in the event of contravention, such a threat shall represent a penalty norm. Testing whether this norm, aimed at obliging the offender to fulfil his future obligation in regard to the omission, is violated implies, therefore, 'calling to account', within the meaning of Article 46(2) of the Basic Law, for committing 'a punishable offence'. In this connection it is immaterial whether the proceedings are aimed at imposing a sentence of imprisonment or a fine;

(b) for the execution of a warrant of arrest in proceedings for the disclosure of means under oath (Section 901 of Civil Procedure).

As only the execution of a warrant of arrest constitutes a restriction of personal liberty within the meaning of Article 46(2) of the Basic Law and therefore requires the permission of the Bundestag, the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure shall adopt the standpoint that the institution of proceedings to compel a statutory declaration by a member of the Bundestag as debtor, and also the issue of a warrant for his arrest by the court to compel such a declaration, do not imply a 'calling to account' and therefore do not require the permission of the Bundestag;

(c) for arrest or enforced appearance in court following non-attendance as a witness (Section 51 of the Code of Criminal Procedure and Section 380 of the Code of Civil Procedure);

(d) for arrest for custodial purposes or for unjustified refusal to testify (Section 70 of the Code of Criminal Procedure and Section 390 of the Code of Civil Procedure);

(e) for arrest directed at bringing about acts not capable of substitution (Section 888 of the Code of Civil Procedure);

(f) for arrest or other restrictions of liberty for the purpose of personal protective custody (Section 933 of the Code of Civil Procedure);

(g) for arrest as a penalty for an offence against public order (Section 178 of the Law on the Constitution of Courts);

(h) for enforced appearance in court and arrest of debtor or joint debtor in bankruptcy proceedings (Section 101 and 106 of the Bankruptcy Code);

(i) for interim confinement in an institution for treatment and care (Section 126a of the Code of Criminal Procedure);

(j) for preventive and corrective measures involving deprivation of liberty (Sections 61 ff. of the Penal Code);

(k) for enforced appearance in court (Sections 134, 230, 236, 329 and 387 of the Code of Criminal Procedure);

(l) for arrest under warrant in accordance with Sections 114, 125, 230 and 236 or 329 of the Code of Criminal Procedure).

15. Protective measures under the Federal Law on Epidemics

Protective measures under the Federal Law on Epidemics are similar in nature to emergency measures. Measures under Sections 34 ff. of this law do not therefore require the waiving of immunity, whether they are taken for the protection of others against the member of the Bundestag or for the protection of the member of the Bundestag against others.

The appropriate authorities shall, however, be required to notify the President of the Bundestag immediately of the measures ordered to be taken against a member of the Bundestag. The Committee on Electoral Scrutiny, Immunities and the Rules of Procedure is empowered to check, or to have checked, whether or not the measures ordered are justified by the Federal Law on Epidemics. Should the committee regard these measures as unnecessary, or no longer necessary, it may demand, by way of preliminary decision, that they be suspended.

Should the committee be unable to meet within two days of receipt of a communication from the appropriate authorities, the President of the Bundestag may accordingly exercise the rights of the committee. He shall inform the committee immediately of his decision.

16. Criminal proceedings pending

On the assumption by a member of the Bundestag of his mandate, all criminal proceedings pending as well as any arrest ordered, execution of a sentence of imprisonment or other restriction of personal liberty (cf. paragraph 14) shall be suspended by virtue of office.

Where proceedings cannot be stayed, a decision shall be obtained from the Bundestag beforehand, unless permission has already been given for a preliminary investigation into a punishable offence.

17. Handling of amnesty cases

The Committee on Electoral Scrutiny, Immunities and the Rules of Procedure is empowered, in all cases where, owing to an amnesty already granted, criminal proceedings against a member of the Bundestag would not be continued, to enable the proceedings to be closed because of the amnesty by stating that the German Bundestag would raise no objections to the application of the Law on Amnesties. Such cases shall not require to be placed before the Bundestag in plenary session.

B. Authorization to bring a criminal prosecution under Section 90b(2) and Section 194(4) of the Penal Code

Authorization to bring a criminal prosecution under Section 90b(2) of the Penal Code - anticonstitutional disparagement of the Bundestag - as well as under Section 194(4) of the Penal Code - insulting statements about the Bundestag - may be granted by way of a preliminary decision under paragraph 13 of the principles governing immunities. Requests shall be transmitted by the public prosecutor's offices in accordance with the guidelines for criminal proceedings and proceedings for the imposition of a fine, to the Federal Minister of Justice, who shall submit them with the request that a decision be taken as to whether permission to bring criminal proceedings under Section 90b(2) or Section 194(4) of the Penal Code shall be granted.

C. Permission for the examination of witnesses under Section 50(3) of the Code of Criminal Procedure and Section 382(3) of the Code of Civil Procedure

Permission for a deviation from Section 50(1) of the Code of Criminal Procedure and Section 382(2) of the Code of Civil Procedure, under which the members of the Bundestag are to be examined at the seat of the Assembly, may be granted by way of a preliminary decision under paragraph 13 of the principles governing immunities. Requests shall be transmitted by the public prosecutor's offices and courts direct to the President of the Bundestag. Permission shall not be required where the date appointed for the examination of the member as a witness falls outside the weeks of any session of the Bundestag.

Greece

I. The legal basis of parliamentary immunity

The Greek system of parliamentary immunities is based on Articles 61 and 62 of the Constitution of 1975 (revised in 1986).

The Rules of Procedure of the Chamber of Deputies set out, in Rule 83, the procedure to be followed in cases of requests for the waiving of parliamentary immunity.

II. Scope of parliamentary immunity

Article 61 of the Constitution establishes the non-liability of members of Parliament: by reason of opinions expressed or votes cast, a deputy cannot be subject to any legal proceedings on the part of any judicial or other body, or be subject to any inspection on the part of private persons.

The non-liability of members of Parliament is operative in the criminal, civil and disciplinary spheres.

Paragraph 2 of the aforementioned Article provides for an exception to the general rule of non-liability referred to in paragraph 1: legal proceedings may only be brought against a deputy for slanderous defamation committed within the framework of an opinion expressed or vote cast by him while carrying out his duties.

Article 62 of the Constitution stipulates that throughout the duration of the session of the legislative body, no deputy may be prosecuted, arrested, detained or in any other way deprived of his personal freedom, without the authorization of the Chamber, except in the case of an obvious crime. Nor may any proceedings for political offences be brought against any member of the dissolved Chamber after the dissolution of the Chamber and before the appointment of the deputies of the new Chamber.

Article 62 thus establishes, for the duration of the session, what it has been agreed to call the inviolability of deputies, in other words it provides for special protection against criminal proceedings which might be brought against them. Inviolability has a purely provisional quality and its purpose is to prevent the continuation of any criminal proceedings.

The abovementioned article aims to guarantee the deputy's independence and the free exercising of his duties.

This special protection covers crimes, as well as offences and infringements whether the deeds of which deputies are accused have been committed within or outside the framework of their parliamentary duties. It should be noted that inviolability does not exclude the carrying out of acts of investigation essential for

gathering the elements of proof relating to the matter in which the deputy is involved, nor does it constitute an obstacle to the arrest, detention, etc. of any accomplices (non-deputies).

Article 62(2) of the Constitution only prohibits the bringing of criminal proceedings against a deputy. It does not prohibit his cross-examination as a witness. It goes without saying, however, that it is forbidden to bring the deputy before the court by force in order to question him as a witness. Nor does it prohibit the opening of an inquiry for the purpose of ascertaining the offence attributed to the deputy, even in the absence of authorization from the Chamber. Article 54 of the Code of Criminal Procedure also defends this conclusion.

The condition for the legality of the inquiry is that it does not affect the deputy's person. By way of example, the deputy's person can be deemed to be affected when a charge is pronounced, a summons is issued or the deputy is forced to appear. Neither is it forbidden to carry out a search at the deputy's home without the prior authorization of the Chamber, when the aim of that search is to discover proof of the perpetration of the offence and not, of course, to arrest the deputy, since immunity provides special protection of the deputy's person, not of his home. Finally, it is not forbidden to bring an action of any kind before the civil courts, nor even to constrain the deputy personally, for debts, during the parliamentary session without the authorization of the Chamber.

III. Acts covered by parliamentary immunity

Non-liability, as instituted in accordance with Article 61(1) of the Constitution, only covers opinions expressed or votes cast by deputies while carrying out their duties:

- by opinion expressed while carrying out parliamentary duties shall be understood the opinion expressed by a deputy either in a proposal of law, or in an amendment submitted for the approval of the Chamber, or in a report or statement submitted to the Chamber or to the parliamentary committees, or in speeches made at meetings of the Chamber or of the committees of the latter, or, more generally, in every circumstance in which the deputy is led to express himself in his capacity as a member of Parliament. Likewise, by opinion shall be understood any opinion expressed within the framework of questions asked in session.

- the term 'vote' refers not only to the vote cast by a deputy within the framework of voting on various bills, but also to any vote which he may be led to express within the Chamber or within the committees thereof.

On the other hand, non-liability does not concern crimes committed while carrying out parliamentary duties which bear no relation to the expression of an opinion or of a vote of the deputy or when

this expression is totally unrelated to the carrying out of his parliamentary duties (for example, an opinion expressed before his electorate or at private meetings).

The purpose of this provision is to enable the deputy to carry out his mandate under the best possible conditions, by ensuring that he has complete freedom of speech and is free to carry out his duties without any extra-parliamentary influence. It also aims to preserve deputies' independence in carrying out their duties by ensuring that they have the freedom to make statements, express opinions and points of view, and to make speeches and put forward arguments and judgments, either in written or oral form.

The only exception to the general rule of non-liability is provided in Article 61(2) of the Constitution: legal proceedings may be brought against a member of Parliament, subject to authorization by the Chamber, when he is guilty of slanderous defamation. The Appeal Court is competent to judge the case. In this case, proceedings may not be initiated until authorization has been given by the Chamber, which must pass an opinion within a period of 45 days of receipt of the complaint by the President of the Chamber. After expiry of this period, or in the event of a formal refusal by the Chamber to grant authorization, the act of which he is accused cannot be made the subject of a new complaint; in other words, proceedings can no longer be brought against a deputy on the same grounds, even after the end of the session.

Moreover, Article 61(3) institutes the right of deputies to refuse to testify (what it has been agreed to call professional secrecy) and aims, on the one hand, to guarantee legally the freedom, for deputies, to make decisions as they see fit and to act as they wish and, on the other hand, to strengthen the relationship of trust which must be established between them, as representatives of the people, and the electorate or political figures who are led to entrust to them various pieces of information. The right of refusal to testify relates to information received or given by deputies while carrying out their duties and to the persons who have entrusted to them or to whom they themselves have given information.

The inviolability of deputies (Article 62 of the Constitution) covers crimes, both offences and infringements, and the offending deeds which have been committed within or outside the framework of parliamentary duties: in all these cases, with the exception of situations of flagrante delicto, deputies cannot be prosecuted, arrested, detained or in any other way deprived of their personal freedom without the authorization of the Chamber.

It is clear that a deputy is not only covered for any offences which he may commit during the term of the session, but also for those committed by him before the beginning thereof (whether or not he was a deputy then) and for which proceedings are brought during the term of the session.

After the dissolution of the Chamber and before the announcement of the deputies of the new Chamber, no legal proceedings may be

brought against any member of the dissolved Chamber for a political crime (see point IV).

IV. Duration of parliamentary immunity

Non-liability comes into force after the taking of the oath and is not limited in time, in other words it extends beyond the session[11].

The right of refusal to testify (Article 61(3) of the Constitution) exists throughout the session, but also after expiry thereof and of the parliamentary mandate.

In the case of requests for authorization for proceedings for slanderous defamation, after expiry of the period provided for in the relevant paragraph of Article 61 of the Constitution, or in the event of refusal by the Chamber to grant authorization, proceedings may no longer be brought against the deputy on the same grounds, even after the end of the session.

The special protection enjoyed by deputies comes into force as from the date of their appointment (i.e. upon their naming by the Court of First Instance) and ceases upon expiry of their parliamentary mandate. In the event of declaration of a state of siege, in accordance with the provisions set out in Article 48(1) of the Constitution, they are given this special protection automatically with effect from the publication of the respective decree, and for as long as the said decree applies, even in the event of dissolution of the Chamber or after expiry of the session.

Any criminal proceedings brought before the beginning of the session and any arrest or detention resulting therefrom are automatically excluded during the term of the session, and the proceedings may only be resumed upon new authorization by the Chamber.

The same provisions are applicable in the case of request for arrest of a deputy after the beginning of the session, for purposes of criminal proceedings brought before the opening of the latter. Likewise, any enforcement of a decision of a court (sentencing to deprivation of freedom) which has taken effect before the opening of the session must be waived as soon as the accused is invested with a parliamentary mandate, unless subsequent authorization is given by the Chamber. Finally, no sentence may be enforced during the term of a deputy's parliamentary mandate, whether that sentence has been passed before or after the opening of the session.

All criminal proceedings brought against a deputy are suspended for the duration of the session, and those for which the Assembly has

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[11] Non-liability is not applicable to members of the government. Anyone with duties of both a minister and a deputy is only covered by non-liability for opinions expressed in his capacity as a member of Parliament, not as a minister.

refused its authorization resume effect as from the end of the session. Any sentences passed against deputies before their appointment are therefore enforced.

The provision contained in the second sentence of Article 62(1) introduces an exception to the rule according to which inviolability is suspended in the event of dissolution of the Chamber, for whatever reason. This exception concerns political offences, for which proceedings may not be brought against a deputy between the dissolution of the Chamber and the announcement of the deputies of the new Chamber. It also concerns deputies who put themselves forward again for the new Chamber. During the lapse of time between the expiry of the session or, in any case, between the dissolution of the Chamber and the announcement by the Court of First Instance of the deputies of the new Chamber, the former deputies are not, therefore, as a general rule, covered by inviolability, unless they have committed a political crime, in which case they are also covered, as an exception, during this lapse of time.

V. Procedure for waiving parliamentary immunity

Requests for authorization for proceedings against a deputy are passed on by the public prosecutor to the Assembly, registered in the order in which they were submitted and notified to the Chamber at once.

The President of the Assembly refers them to the competent parliamentary committee, namely the Committee on Public Administration, Law and Order and Justice, which examines them and determines whether or not authorization should be granted, within the time given by the President of the Chamber. The said committee is obliged to hold a hearing of the deputy concerned if the latter has applied therefor to the Chairman of the Committee and may request the government to provide it with such documents as it may consider necessary before giving its opinion. The government can only refuse to provide these documents for reasons connected with national defence or security.

Once the competent committee has stated its opinion, the requests for proceedings are entered on the agenda of the plenary session of the Chamber[12], during which a debate takes place followed by a vote by secret ballot.

According to Article 62 of the Constitution, authorization is considered definitely refused if the Chamber fails to issue an opinion in respect thereof within three months of the handing of the request for proceedings by the public prosecutor to the

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[12] In all cases, requests must be entered on the agenda at least ten days before expiry of the deadlines fixed in Article 61(2) and Article 62(1) of the Constitution.

President of the Chamber. The three-month deadline is suspended during a parliamentary recess.

In the event of a request for authorization for proceedings for slanderous defamation, this three-month deadline is reduced to 45 days (Article 61(2) of the Constitution).

VI. Parliamentary practice

From 1974 to December 1992, 347 requests for the waiving of parliamentary immunity were examined by the Chamber of Deputies. The latter gave a favourable reply to only three of those requests[13].

Parliamentary immunity was waived, in the first case, for the successive offence of illegal and continued export of foreign currencies (105th session, of 5 April 1984) and, in the second, for the offence of diversion of an extremely valuable object, committed while carrying out duties (28th session, of 14 June 1990)[14].

The criterion which seems to have been used in both cases is the great publicity and the impact on public opinion of the affairs for which the State Prosecutor had requested the waiving of parliamentary immunity. The Chamber considered, by a majority, that the protection of Parliament's reputation and of the honour of the deputies in question demanded that justice be done quickly, something which could not have been possible without the waiving of the immunity.

Quite a large number of requests have not been examined by the Chamber (from 1974 to November 1990, for example, the number of requests not examined was 118). The reasons are either that the time-limit had passed and the Chamber was tacitly considered not to have given the authorization requested (as in the majority of cases),

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[13] During the 1st session (1974-1977), 47 requests for the waiving of immunity were filed and all were discussed by the Chamber; no request was accepted. During the 2nd session (1977-1981), 123 requests were filed and only 24 of these were examined; in no case was immunity waived. During the 3rd session (1981-1985), 95 requests for the waiving of a deputy's immunity were submitted; 80 were examined, 15 were not, and only one was granted. During the 4th session, (1985-1989), 89 requests were submitted; 81 were examined, 8 were not, and none was granted. During the 5th session (June-November 1989), 7 requests were submitted; 3 were examined during the following session, 4 were not examined. During the 6th session (November 1989 - April 1990), 9 requests were submitted; one was examined, one was not and the other 7 were examined during the following session. During the 7th session (from April 1990), 148 requests have been submitted to date (December 1992); 92 have been examined, but only two of them have been granted.

[14] Information on the third case was not supplied.

or that it was a new request based on the same facts and, as such, inadmissible in accordance with Rule 83(9) of the Rules of Procedure of the Chamber, or that the Chamber was not competent in the matter, or, finally, that the process as laid down by the procedure in such matters was not completed and the said requests were not discussed in plenary even though they were entered in the register referred to in Rule 83 of the Rules of Procedure.

The prevailing rule in Greek parliamentary practice - and this is equally true for the period prior to that which is discussed here - is that the Chamber does not waive immunity. This practice is valid for all offences, including insult, defamation or slanderous defamation (most of the requests filed were for slanderous defamation).

The non-liability of a deputy only covers, out of all his political activities, opinions expressed or votes cast by him while carrying out his parliamentary duties. This is a mandatory provision, which appears explicitly in the Greek Constitution (Article 61(1)). Parliamentary practice, however - which consists, as mentioned in the last point, of not waiving the immunity of deputies - has not enabled specific criteria to be ascertained owing to a differentiation, in limited cases, between parliamentary activities and extra-parliamentary activities of the representatives of the nation.

'fumus persecutionis' is an unknown concept in Greek parliamentary theory and practice. If, however, this implies a rebuttable presumption as to the fact that the proceedings brought against a deputy have political aims, it must be concluded that Greek parliamentary practice - which, as we have said, rejects indiscriminately nearly all requests for the waiving of immunity - seems to have made it an irrebuttable presumption.

When the Chamber decides on whether or not to waive a deputy's immunity, it is acting in a kind of judicial capacity, but it does not act as a judicial body and does not consider whether the charge is justified. Its chief and sole aim is to protect the functioning of parliamentary institutions and, consequently, it simply looks at whether the future proceedings have political ends, at what point it is justified in refusing authorization to waive immunity or, conversely, at what point it must grant the authorization in question.

ANNEX

Constitution

Article 61

1. Deputies shall not be subject to legal proceedings, nor questioned in any way whatsoever, on the grounds of opinions expressed or votes cast by them while carrying out their parliamentary duties.

2. According to law, legal proceedings may only be brought against deputies for slanderous defamation and after authorization of the Chamber. The Appeal Court is competent to judge the case. Authorization shall be deemed to have been definitely refused if the Chamber fails to issue an opinion in respect thereof within 45 days of receipt of the complaint by the President of the Chamber. In the event of refusal to grant authorization, or expiry of the abovementioned period, the offending act may not be made the subject of a new complaint.
   This paragraph is applicable only with effect from the next session.

3. Deputies are not obliged to testify on information received or given by them while carrying out their duties, nor on the persons who have entrusted to them or to whom they themselves have given that information.

Article 62

During the session, no deputy may be subject to legal proceedings, arrested, detained or in any other way deprived of his personal freedom, without the authorization of the Chamber. Nor may any member of the dissolved Chamber be subject to proceedings for a political offence after dissolution of the Chamber and before the announcement of the deputies of the new Chamber.

Authorization shall be deemed to have been definitely refused if the Chamber fails to issue an opinion in respect thereof within three months of the handing over of the request for proceedings by the public prosecutor to the President of the Chamber.

The three-month deadline is suspended during a parliamentary recess.

No authorization is required in the event of flagrante delicto.

Rule 83

1. Requests for authorization of criminal proceedings against a deputy submitted to the Assembly, in accordance with Article 61(2) and Article 62(1) of the Constitution, by the State Prosecutor, are entered in a special register in the order in which they were submitted.

2. The Chamber is notified of these requests immediately after they have been submitted and forwarded by the President to the committee referred to in Rule 32(4).

3. The committee examines the requests and issues an opinion on whether or not authorization should be granted within the deadlines set for it by the President of the Chamber in the document accompanying the request.

4. The committee is obliged to hold a hearing of the deputy concerned if the latter has informed the chairman of the committee of his wish to attend the meeting at which the request concerning him is to be examined.

5. The committee may, if the case arises, request the government to provide it with such documents as it shall consider necessary before giving its opinion. The government may only refuse to provide it with these documents for reasons connected with national defence or security.

6. Requests for proceedings are entered on the agenda of the plenary session of the Chamber immediately after the competent committee has issued its opinion. In all cases, requests are entered on the agenda at least ten days before the expiry of the deadlines set by Article 61(2) and Article 62(1) of the Constitution.

7. The debate in the Chamber begins with the rapporteurs' speeches and concerns the opinion given by the committee concerned. If the latter fails to give its opinion within the deadlines set, the debate can only concern the events mentioned in the request for the waiving of immunity.

8. The vote as to whether or not the authorizations referred to in paragraph 1 should be granted is carried out by secret ballot.

9. Any new request for proceedings dealing with the same events shall not be taken into consideration.

Spain

I. Legal basis

The first paragraph of Article 71 of the Spanish Constitution stipulates that deputies and senators shall enjoy the privilege of inviolability ('inviolabilidad') for opinions expressed while carrying out their duties.

The second paragraph of the said constitutional provision establishes the privilege of immunity ('inmunidad'): deputies and senators may be detained only in case of flagrante delicto and may not be charged or be subject to legal proceedings without the prior authorization of their respective Chambers.

The procedure relating to the examination of requests for the waiving of parliamentary immunity is the subject of Rule 22 of the Rules of Procedure of the Senate and of Rules 10 to 14 of the Rules of Procedure of the Congress of Deputies.

II. Scope of parliamentary immunity

Inviolability implies legal non-liability of a member of Parliament (criminal, civil and disciplinary) for opinions expressed and votes cast in Parliament. Its purpose is to ensure, through the freedom of speech of members of Parliament, the free formulation of the wishes of the legislative body.

Immunity constitutes a privilege which protects the personal freedom of deputies and senators, sheltering them from detentions and legal proceedings, thereby ensuring that the composition and running of Parliament are not unduly affected.

According to a decision of the Constitutional Court of 18 January 1990[15], the prior authorization required under Article 71 of the Constitution in order that deputies and senators may be charged or be subject to legal proceedings cannot be requested for the admission, examination and settlement of civil claims which can in no way affect their personal freedom.

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[15] STC, full court, on the question of unconstitutionality number 194/89; this verdict declares unconstitutional the Organic Law for the reform of the Law for the protection of the right to honour, personal and family privacy and self-respect (Organic Law 3/1985, of 29 May, amending Organic Law 1/1982, of 5 May).

III. Acts covered by parliamentary immunity

Inviolability implies that members of Parliament are not held liable for opinions expressed and votes cast while carrying out their duties. The opinions need not be only those expressed orally, but all those which can be fairly deemed to be directed towards the formulation of the wishes of Parliament. Consequently, all acts which, although carried out within the context of meetings, do not have the above-mentioned purpose, such as any kind of violence to persons or things, are excluded.

The question of which acts can be regarded as a parliamentary duty has nearly always been resolved by using the criterion of a list: this usually includes all statements in a plenary session or on a committee, questions, appeals, requests, speeches, motions, judgments, amendments, private votes, agendas, introduction of bills, etc. Also included are actions which, although performed outside the place of meeting, are performed in the exercise of the duties themselves, such as committees of inquiry or investigation. Official publications and reports on deliberations made officially to the press are also protected. It excludes all acts not related to the parliamentary function, including those which, while they are related to the representative's public function, do not affect the formulation of the wishes of Parliament: in other words, meetings with the electorate, journalistic activity, party or private meetings (even in the official seat of Parliament)[16].

As regards immunity, this provides a specific protection and safeguard in criminal matters: except in the case of flagrante delicto, no member of Parliament may be detained and the charging or bringing of legal proceedings against a deputy or a senator is subject to the prior authorization of their respective Chambers.

The examining magistrate is responsible for determining the existence of flagrante delicto, by virtue of the law of 9 February 1912 ('governing the jurisdiction and manner of bringing proceedings against senators and deputies for reasons of a crime').

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[16] Legal opinion is divided on the scope of inviolability: according to some interpretations, inviolability extends to parliamentary acts and to related acts, bearing in mind the role of intermediary played by parliamentary groups between the political parties and the Houses; other authors defend a classical position and limit inviolability to opinions expressed within Parliament and parliamentary or para-parliamentary bodies, by referring to the guarantee offered by the possibility of internal control or self-control as embodied by the President of the House.

IV. Duration of parliamentary immunity

Inviolability is permanent in nature in that it continues to have effect when the parliamentary mandate expires.

Immunity is valid as from the moment when the deputies or senators are proclaimed elected and for the whole duration of the mandate of the member of Parliament (it does not, therefore, apply only during sessions of Parliament).

V. Waiving of parliamentary immunity

A request for the waiving of parliamentary immunity is passed on by the President of the Supreme Court (whose 'Sala de lo Penal', according to Article 71(3) of the Constitution, is competent as regards proceedings against deputies or senators[17]) to the President of the Chamber in question. The prior authorization of the Chamber does not constitute a legal measure, but a political act which, in turn, represents a mandatory procedural condition: any verdict opposing this constitutional procedure would be rendered absolutely null and void.

The President of the assembly concerned passes on the request to the competent committee[18], which must give its opinion within a maximum period of thirty days, after hearing the member of Parliament in question (Rule 22(2) of the Rules of Procedure of the Senate and Rule 13(2) of the Rules of Procedure of the Congress).

The examination of the committee's opinion appears on the agenda of the first ordinary full meeting following the submission thereof. The examination of requests for the waiving of parliamentary immunity takes place in camera and may be made the subject of a debate during which two statements for and two statements against follow each other alternately.

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[17] The special privilege of deputies and senators, in criminal matters, comprises the sole competence of the Supreme Court not only for requests for waiving of immunity in order to bring proceedings or to arrest, but for all procedural acts once the proceedings have begun, including orders and warrants for detention, arrest, imprisonment or indictments. The only exception is that of the case of flagrante delicto, which carries a grievous penalty in which the examining magistrate 'may, of course, decide to detain the offender, immediately informing the Supreme Court, which shall report the case as a matter of urgency to the legislative body to which the defendant belongs'.

[18] In the Congress of Deputies, the Committee on the Statute for Members (Comisión del Estatuto de los Diputados); in the Senate, the Committee on Immunities (Comisión de suplicatorios).

Voting takes place by secret ballot and in camera (Rule 97(2) and (3) and Rule 22(3 ff.) of the Rules of Procedure of the Senate; Rule 63(2) of the Rules of Procedure of the Congress of Deputies).

However, the request for the waiving of parliamentary immunity is considered rejected if the Chamber concerned fails to issue an opinion in this respect within a period of sixty clear days of the date of receipt of the request (Rule 22(5) of the Rules of Procedure of the Senate and Rule 14(2) of the Rules of Procedure of the Congress).

The President of the Chamber concerned notifies the Supreme Court of the decision within one week of that decision being taken.

If it has been decided to waive parliamentary immunity, the Senate may also decide, bearing in mind the nature of the imputed facts, to temporarily suspend the person concerned from his position as a senator. This decision is taken in camera and by an absolute majority of the senators (Rule 22(1)(6) of the Rules of Procedure of the Senate).

The Rules of Procedure of the Congress of Deputies provide, in Rule 21(1)(2), for the suspension of the rights and obligations of deputies when, after the granting by the Chamber of the authorization for proceedings and the confirmation of the court judgment ordering the opening thereof, the deputy has been remanded in custody, for the duration thereof.

VI. Parliamentary practice

1. The Senate

As regards the Spanish Senate, these are some of the criteria established by precedent in the competent parliamentary bodies:

- 'the criterion of the senator involved does not influence the decision of the Chamber, immunity is inalienable' (Opinion of the Committee on Immunities, BOCG Senado - Official Gazette of the Spanish Parliament, Senate section - 21.9.1983);

- 'parliamentary immunity is a privilege connected not with the person but with the function' (Opinion of the Committee on Immunities, BOCG, Senado, Official Gazette of the Spanish Parliament, Senate section - 21.9.1983);

- 'the reply to be given to a request for the waiving of immunity must be dictated both by the desire not to hinder the proper exercise of the parliamentary mandate and by taking into account the principle of equality before the law' (Report of the rapporteurs' committee of the Committee on Immunities, BOCG Senado, 21.11.1983);

- 'immunity is justified with regard to all parliamentary duties which it is its main objective to protect' (Opinion of the Committee on Immunities, BOCG Senado, 7.5.1987);

- 'the general criterion consists of not authorizing proceedings when the deeds have been committed while carrying out a purely political function, when resorting to the free exercise of the right to criticize the behaviour of the authorities which all citizens have and, in particular, those who are vested with the function of representatives of the Spanish people' (Report of the rapporteurs' committee of the Committee on Immunities, BOCG Senado, 17.2.1987);

- 'purely political activity should not be confused with the relationship between persons in public office' (Report of the rapporteurs' committee of the Committee on Immunities, BOCG Senado, 7.6.1988);

From 1979 to 3 November 1992, the Senate examined 25 requests for the waiving of parliamentary immunity, of which 17 were rejected and 8 received a favourable response[19].

Immunity was waived in cases of 'serious resistance to the agents of authority', 'outrage against the government', 'outrage against the Head of State' and 'illegal detention or crimes of violence'.

2. The Congress of Deputies

In the same period (from 1979 to November 1992), the Congress of Deputies examined 25 requests for the waiving of parliamentary immunity, of which 11 were rejected and 14 received a favourable response.

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[19] First session (1979-1982): 7 requests; second session (1982-1986): 3 requests; third session (1986-1989): 10 requests; fourth session (1989-1993): 5 requests up to 3 November 1992. Authorizations for proceedings were granted during the first session (3 cases), the third session (2 cases), and the fourth session (3 cases).

Developments were as follows:

	Session	Requests accepted	Requests rejected
I	(1979-1982)	1	3
II	(1982-1986)	6	3
III	(1986-1989)	2	4
IV	(1989-Nov. 1992)[20]	5	1

It can be seen from these figures that it is impossible to discern a constant or regular trend from one session to the next, as regards the number of requests accepted or rejected. During the current session, however, we can see that the number of authorizations granted (5) is much greater than the number of refusals (1).

For some years, and in particular during the current session, the Committee on the Statute for Members and the Chamber together have been systematically in favour of granting authorization for proceedings when they are clearly dealing with what one might call ordinary offences (e.g. false accounting, misappropriation or embezzlement of funds, corruption of state employees, etc.), even if committed while carrying out public duties or on the occasion of political activities (in particular the public defence of terrorist activities of armed gangs). They are fairly reserved, on the other hand, when dealing with allegedly criminal remarks or pieces of writing (except for the defence of violence and terrorism).

It appears, then, that a certain jurisprudence of the Chamber is beginning to take shape, in that the privilege of immunity is given a narrow interpretation.

3. The new Constitution and the protection in the face of individual parliamentary acts of outside relevance provided for in the L.O.T.C. (Organic Law of the Constitutional Court) have opened up the possibility of jurisdictional control of the privilege of immunity.

The jurisprudence of the Constitutional Court maintains that access to criminal action may be prevented, in other words a request for the waiving of immunity may be refused, only 'in cases where said refusal is in keeping with the purpose pursued by the institution of parliamentary immunity and on which the possibility of refusal is based. On the contrary, a refusal of authorization to bring legal proceedings will be incorrect and will constitute an abuse of the constitutional role of immunity when the latter is used for

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[20] The IVth session began in October 1989 and in theory does not end until October 1993; these data reflect the situation up until 18 November 1992.

ends which are not its own. We are, therefore, undoubtedly asserting a constitutional need to condition or subject to limits the power of the parliamentary Chambers to grant or refuse requests for the waiving of immunity' (Judgment 10/1985, ground no. 6).

We give below some extracts from certain decisions handed down by the Constitutional Court in this area:

- STC 51/1985 of 10.4.1985: 'parliamentary privileges must be interpreted stricto sensu so that they do not become privileges likely to affect the basic rights of third parties'.

- STC 90/1984 of 22.7.1985: 'parliamentary immunity cannot be conceived as a personal privilege, in other words as an instrument created solely for the personal benefit of deputies or senators and having as its objective the shielding of their behaviour from the application or decision of judges or courts'.

  'The examination carried out by the Chamber is not designed to lead up to a judgment in legal terms of the behaviour which gave rise to the submission of a request for the waiving of parliamentary immunity, but fits the idea that immunity must enable the Chambers themselves to assess the political significance of that behaviour, which is something bodies of a jurisdictional nature cannot do. Any refusal of the request for the waiving of immunity must set out the grounds on which it is based'.

- STC of 18.1.1990[21] : 'immunity is a privilege of a formal nature which protects the personal freedom of representatives of the people, sheltered from detentions and legal procedures, and which thereby ensures that after cases of political manipulation the member of Parliament is not prevented from attending meetings of the Chamber and that, consequently, the composition and running of Parliament are not unduly affected'.

- 'Parliamentary immunity was not created to halt the course of a civil action brought against the member of Parliament'.

  'The prior authorization required under Article 71 of the Constitution in order that deputies and senators may be charged and subject to legal proceedings cannot be demanded for the admission, examination and settlement of civil claims which can in no way affect their personal freedom, so that the extension of the civil scope of this procedural guarantee is constitutionally unlawful'.

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21 See note 1.

ANNEX

Constitution

Article 71

1. Deputies and Senators shall enjoy inviolability for opinions stated while carrying out their duties.

2. During the term of their mandates Deputies and Senators shall also enjoy immunity and may be detained only in case of flagrante delicto. They may not be charged or subject to legal proceedings without the prior authorization of the respective Chamber.

3. In cases against Deputies and Senators the Criminal Division of the Supreme Court will have jurisdiction.

4. Deputies and Senators will receive an allowance to be fixed by the respective Chambers.

Rules of Procedure of the Senate

Rule 22

1. During the term of their mandates, Senators shall enjoy immunity and may not be arrested except in the case of flagrante delicto. The Bureau of the President of the Senate shall be informed immediately of any arrest or detention.

   Senators may not be charged or subject to legal proceedings without the prior authorization of the Senate, requested by means of the respective request for the waiving of immunity. This authorization shall also be necessary in proceedings being prepared against persons who, while being subject to legal proceedings or charged, take on the office of Senator.

2. Once the request for the waiving of immunity has been received, the President of the Senate shall forward it immediately to the Committee on Immunities, which, after calling, where appropriate, for any relevant background information and hearing the interested party, must issue an opinion within a maximum period of thirty days. The debate on the opinion shall be included in the agenda of the first ordinary plenary session to be held.

3. The Senate shall meet in secret session to be informed of the opinion on the request for the waiving of immunity in question. A debate may be opened on the granting of the request, with two speeches in favour and two against alternately.

4. The President of the Senate shall, within one week of the decision made by the Chamber, notify the Supreme Court thereof, sending it a certified copy of the resolution adopted.

5. The request for the waiving of immunity shall be deemed to have been rejected if the Chamber has not passed judgment thereon within sixty calendar days of the day following that on which the request for the waiving of immunity was received.

6. Once the request for the waiving of immunity has been granted and the indictment is firm, the Chamber may decide by an absolute majority of its members, and according to the nature of the imputed facts, in favour of the temporary suspension from office of the Senator.

   The meeting at which the Chamber decides on whether or not suspension should take place shall also be secret, only two turns in favour and two against will be allowed, alternately, and a hearing of the Senator in question shall not be granted.

   In the event of the temporary suspension referred to in this article, the Chamber, in its resolution, may decide to stop the allowance of the Senator in question until his reinstatement.

Rules of Procedure of the Congress of Deputies

Rule 10

Deputies shall enjoy inviolability, even after their mandates have ceased, for opinions expressed while carrying out their duties.

Rule 11

During the term of their mandates, Deputies shall also enjoy immunity and may be detained only in the case of flagrante delicto. They shall not be charged or subject to legal proceedings without the prior authorization of the Congress.

Rule 12

The President of the Congress, having become aware of the detention of a Deputy or any other judicial or government action which could hinder the exercise of his mandate, shall immediately adopt such measures as shall be necessary in order to safeguard the rights and privileges of the Chamber and of its members.

Rule 13

1. Once a request for the waiving of immunity has been received, in a request for the authorization of the Congress referred to in Rule 11, the President, subject to a decision adopted by the Board, shall refer it, within five days, to the Committee on the Statute of Members. Any request for the waiving of immunity which has not been dispatched and documented in the manner required by the procedural laws in force will not be accepted.

2. The committee must complete its work within a maximum period of thirty days after hearing the interested party. The hearing may be in writing within a time-limit set by the committee or orally before the committee itself.

3. Once the committee's work has been completed, the matter, duly documented, shall be submitted to the first ordinary plenary meeting of the Chamber.

Rule 14

1. Within a period of one week from the decision of the plenary meeting of the Chamber on the granting or refusal of the authorization requested, the President of the Congress shall notify the judicial authority thereof, advising it of the obligation to inform the Chamber of any rulings or verdicts handed down which may affect the Deputy personally.

2. The request for the waiving of immunity shall be deemed to have been rejected if the Chamber has not passed judgment within sixty calendar days, calculated while in session from the day following that on which the request was received.

France

I. Legal basis of parliamentary immunity

Parliamentary immunity is established by Article 26 of the Constitution[22]. The first paragraph of this provision establishes the non-liability of members of Parliament for opinions expressed or votes cast by them while carrying out their duties.

Inviolability results from Article 26(2, 3 and 4) of the Constitution. Rule 80 of the Rules of Procedure of the National Assembly and Article 16 of the General Directive of the Bureau of the National Assembly, and also Rule 105 of the Rules of Procedure of the Senate set out the provisions governing the waiving of parliamentary immunity.

The law of 29 July 1881 on the freedom of the press, in its Article 41, as amended by order No. 58-1100 of 17 November 1958, provides that 'speeches made within the National Assembly or the Senate, and reports or any other document printed by order of one of these two assemblies, shall not give rise to any action'.

II. Scope of parliamentary immunity

The wording of Article 26(1) of the Constitution - by the number of verbs alone ('pursue', 'investigate', 'arrest', 'detain', 'judge') - clearly reflects the legislative desire to guarantee as far as possible the free exercise of the parliamentary mandate. Non-liability thus protects members of Parliament against any legal action, whether criminal or civil, on the grounds of acts relating to the exercise of their mandates. In its sphere of application, therefore, non-liability has an absolute character: no procedure allows this immunity to be 'waived'.

Inviolability, (Article 26(2, 3 and 4) of the Constitution), on the other hand, constitutes a relative protection: it has a strictly defined sphere of application; certain acts are not covered by virtue of the conditions under which they were committed; the protection given is variable over time; the assemblies have broad powers of assessment as regards its use.

As regards criminal or minor offences and for the duration of the sessions, inviolability protects members of Parliament against proceedings and arrest, unless authorized by the Assembly to which they belong and with the exception of flagrante delicto. However, acts performed as part of a preliminary inquiry; searches made

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[22] This constitutional principle was affirmed in the Constitution of 3 September 1791 as regards non-liability and that of 24 June 1793 as regards inviolability.

within the scope of the customs code or as a preventive measure; summonses to appear as a witness; acts prior to prosecution, such as a request for the nomination of a judge (Article 687 of the code of criminal procedure) do not constitute acts of proceedings, within the meaning of Article 26.

Since the intention is to protect the freedom of action of members of Parliament, the concept of arrest is understood in a broad sense: it includes in particular provisional detention and police custody.

Outside the sessions, only arrest is prohibited, unless authorized by the Bureau of the Assembly to which the member of Parliament belongs. This authorization is not necessary: in case of flagrante delicto; when the arrest is the result of proceedings which have been authorized by the Assembly and therefore properly initiated in session; when the arrest is the result of a final sentence to a punishment which deprives of freedom.

Parliamentary immunity is an element of law and order, which means that it is impossible for a member of Parliament to waive the benefits of non-liability or inviolability, or the nullity of acts performed in violation of immunity.

III. Acts covered by parliamentary immunity

Non-liability covers all acts coming under parliamentary duty: participating and voting in open session and on committees, initiatives such as private bills or amendments, reports tabled on behalf of a committee, written and oral questions, and acts performed within the framework of a mission assigned by the parliamentary authorities.

Jurisprudence, however, seems to have supported a restrictive idea of the nature of the acts covered by non-liability, by excluding in particular, for example, remarks made by a member of Parliament during a radio interview[23] or opinions expressed by a member of Parliament in a report drafted during a mission assigned by the Government[24].

The protection given by non-liability is valid even when those acts constitute an infringement or are likely to result in damage.

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23 Cf. reply of the Minister of Justice dated 23 November 1978.

24 Cf. judgment of the Paris Court of Appeal of 11 March 1987 (M. Alain Vivien) and decision No. 89-262 DC of the Constitutional Council of 7 November 1989 on the law relating to parliamentary immunity.

There are sometimes limits to this protection: the deeds and words of members of Parliament remain subject at all times to the disciplinary power of the Presidents of each House.

The latter uses sanctions (call to order, call to order with entry in the minutes, censure, censure with temporary exclusion) laid down by the Rules of Procedure of the Assemblies enabling him to keep order and to ensure that mandates are properly carried out.

The member of Parliament, when not exercising his mandate, is fully responsible for his deeds and words, subject to inviolability.

Inviolability only operates in criminal matters and minor offences (civil actions, police fines, and penalties specifically relating to taxation do not, therefore, come within its sphere of application), except in the case of flagrante delicto, for which verification of the term falls within the competence of the judicial authority. Even in the latter case, however, a parliamentary assembly may request the suspension of proceedings or of the detention of one of its members, pursuant to Article 26(4) of the Constitution, if it considers that improper recourse has been had to the exception of flagrante delicto.

IV. Duration of parliamentary immunity

Non-liability has a permanent, perpetual character: its application is not influenced by the arrangements concerning parliamentary sessions, and it stands in the way of proceedings on the grounds of acts performed during the mandate, and even after the end thereof.

Inviolability, on the other hand, can only be claimed within the limits of the duration of the parliamentary mandate: proceedings initiated prior to the start of the mandate may be continued during the term thereof (Cass. Crim., 26 June 1986, Bull. crim. No. 227) and, upon expiry of his mandate, the member of Parliament no longer enjoys special protection, except for acts covered by non-liability. Moreover, the extent of the protection which it affords is connected with the system of parliamentary sessions: for the duration of the sessions, inviolability prohibits both prosecution and arrest, unless authorized by the Assembly; outside the sessions, only arrest is prohibited, unless authorized by the Bureau of the Assembly to which the interested party belongs, while proceedings will be totally free.

During the sessions, the Assembly may always, pursuant to Article 26(4) of the Constitution, request the suspension of proceedings initiated outside the sessions or of the detention of one of its

members. According to a constant parliamentary jurisprudence[25], proceedings are suspended not only until the end of the session but also until the end of the mandate of the member concerned.

V. Procedure for the waiving of parliamentary immunity

Rule 80 of the Rules of Procedure of the National Assembly and Article 16 of the General Directive of the Office of the Assembly, and also Rule 105 of the Rules of Procedure of the Senate, govern the procedure to be followed for requests for authorization or for suspension of proceedings.

In cases where the intention to bring proceedings comes from the State Prosecutor's Office or from a private individual who has lodged a complaint in association with the public prosecutor, the request, formulated, depending on the circumstances, by the public prosecutor or the complainant, is sent to the President of the Assembly to which the member of Parliament belongs, by the Minister of Justice.

In cases where a private individual wishes to bring a matter to court directly by means of a direct summons, he must produce in support of his request documents proving that he has a real intention to prosecute and that inviolability stands in the way of it.

Requests for the suspension of proceedings or of detention take the form of a motion for a resolution submitted to the Bureau of the Assembly in question by one or more members of Parliament. This motion for a resolution is printed, distributed and referred to an ad hoc committee.

For the examination of each request for the waiving of parliamentary immunity and each request for the suspension of proceedings or for the suspension of detention of a member of Parliament, an ad hoc committee (of fifteen members in the National Assembly and thirty members in the Senate), appointed on the basis of proportional representation of the political groups, is set up. In the National Assembly, this committee must hold a hearing of the member of Parliament in question or his representative; in the case of a request for the suspension of detention or of proceedings, the committee must also hold a hearing of the originator or first signatory of the motion. The obligation to hear the member of Parliament in question and the originator of the motion is not, however, provided for in the Rules of Procedure of the Senate.

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[25] The Senate has extended the term of the suspension of proceedings to the term of the mandate since 1977 and the National Assembly came round to the idea in 1980 (Cuttoli Report, Senate No. 373, 1976-1977, minutes of the sitting of 15.6.1977; Séguin Report, Nat. Ass. No. 2054, annex to the minutes of the sitting of 12.11.1980).

The discussion in open session concerns the committee's conclusions formulated in a motion for a resolution. In the National Assembly, only the committee's rapporteur, the Government, the deputy in question or his representative, one speaker for and one speaker against may take part in the debate.

Voting takes place in the manner provided by ordinary law: by show of hands, unless an open vote is requested (Rules 64 and 54 of the Rules of Procedure of the National Assembly; Rules 54 and 56 of the Rules of Procedure of the Senate).

In derogation from common parliamentary law, a rejection by the National Assembly of the conclusions of rejection of the ad hoc committee is equivalent to an adoption of the request.

In the event of the rejection of a request for the suspension of detention or proceedings, no new request concerning the same facts may be submitted during the course of the session (Rule 80(10) of the Rules of Procedure of the National Assembly).

Outside the sessions, it is the Bureau of the Assembly to which the member of Parliament belongs which is competent to authorize arrests.

VI. Parliamentary practice

According to a decision of the Constitutional Council (decision No. 62-18 DC of 10 July 1962 relating to the amendment of Rule 80 of the Rules of Procedure of the National Assembly), the National Assembly has to pass judgment on the 'serious, loyal and sincere nature of any request for the waiving of parliamentary immunity submitted to it, in the light of the facts on which this request is based and to the exclusion of any other subject'.

Other criteria have been taken into consideration by parliamentary jurisprudence: the possible proximity of the end of the session - after which the proceedings may be freely initiated - and the real urgency of the proceedings from the point of view of law and order or the interests of the injured party, taking into account the gravity of the offending acts.

It should be stressed, however, that Parliament has power of discretionary assessment and that the Assemblies pass judgment by pure expediency, by trying to find a balance between, on the one hand, the requirements of justice and, on the other hand, the need to protect members of Parliament from obstacles to the free exercise of an elective mandate.

Between 1958 and 14 December 1992, of the seven requests for the waiving of immunity (requests for authorization of proceedings) on

which a decision was made by the National Assembly[26], the waiving of immunity was granted four times (for participation in the so-called 'Algiers barricades' uprising in January 1960; for inducement to undermine State security; for plotting against the authority of the State; for concealment of misuse of company property and aiding and abetting of forgery and use of forgery in private commercial and banking documents, on the one hand, and of passive corruption, concealment of misuse of company property and aiding and abetting of forgery and use of forgery in private commercial and banking documents, on the other hand). The three cases refused concerned cases of defamation. During the same period, the National Assembly examined five requests for the suspension of proceedings or of detention of deputies: two were turned down, and concerned a deputy detained following his participation, in January 1960, in the 'Algiers barricades' uprising; three were accepted, and concerned infringements included under the commonly accepted idea of political campaigning (violation of the press laws, matters of 'free radio' and demonstrations). The last of the five requests for suspension of proceedings or of detention of deputies and examined by the National Assembly, on 14 November 1980, concerned nine deputies.

The Senate, for its part, examined during the same period of time six requests for authorization of proceedings (two granted, four rejected) and eight requests for the suspension of proceedings (all accepted).

It can be seen from this that very few requests for the waiving of parliamentary immunity or suspension of proceedings have been submitted and examined by the French Parliament.

On the other hand, 'since 1986, there have been some twenty criminal proceedings brought against members of Parliament by reason of recesses which did not give rise to requests for the suspension of proceedings. They relate not only to the usual violations of the press laws through libel, but also infringements falling within the province of financial or commercial management (interference, misuse of company property or corruption). All of this points to a tendency to limit the application of parliamentary

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26 It can be seen that no provision guarantees the applicant that the Assembly will pass judgment on his request: the committee is not bound by mandatory time limits and its inclusion on the agenda is left to the discretion of the Government or of the Assembly. Thus, out of 24 requests for authorization of proceedings filed with the National Assembly between 1958 and 1992, only seven were discussed in open session. However, at least fourteen of the seventeen motions not discussed had been filed shortly before the close of a parliamentary session.

immunity to proceedings closely linked with the parliamentary activities of deputies'[27].

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[27] Benoît Jeanneau, 'The French concept of parliamentary immunity from the viewpoint of the construction of a European constitutional law', speech given at the public hearing on European parliamentary immunity, organised by the Committee on the Rules of Procedure of the European Parliament and held in Brussels on 27 and 28 November 1991.

ANNEX

Constitution

Article 26

No member of Parliament shall be subject to legal proceedings, investigations, arrest, detention or judgment for opinions expressed or votes cast by him while carrying out his duties.

No member of Parliament shall, for the duration of the sessions, be subject to proceedings or arrest on criminal or minor offences except with the authorization of the Assembly to which he belongs, except in the case of flagrante delicto.

No member of Parliament shall, outside the sessions, be arrested except on the authorization of the Bureau of the Assembly to which he belongs, except in the case of flagrante delicto, authorized proceedings or final sentence.

The detention or prosecution of a member of Parliament shall be suspended if the Assembly to which he belongs requests it.

Rules of Procedure of the National Assembly

1. For the examination of each request for the waiving of the parliamentary immunity of a deputy, each request for the suspension of proceedings already brought or each request for the suspension of detention of a deputy, an ad hoc committee shall be set up consisting of fifteen members, appointed by proportional representation of groups, according to the procedure set out in Rule 25 and in Rule 38(4). Requests concerning related facts shall be attached.

2. Chapter X on the procedure relating to the work of committees shall be applicable to the ad hoc committees. The provisions of Rule 35 concerning special committees are also applicable to the ad hoc committees. The provisions of Rule 87 shall not be applicable thereto.

3. A committee receiving a request for the waiving of parliamentary immunity must hold a hearing of the deputy concerned, who may be represented by one of his colleagues.

4. A committee receiving a request for the suspension of detention or of proceedings must hold a hearing of the originator or first signatory of the motion and the deputy concerned or the colleague whom he has asked to represent him. If the deputy concerned is detained, it may arrange for him to be heard in person by one or more of its members delegated for that purpose.

5. Requests for the waiving of parliamentary immunity shall be included in the agenda of the Assembly by the Government, in the manner provided in Rule 89, or by the Assembly, at the

proposal of the Conference of Presidents, in accordance with Rule 48.

6. To enable the Assembly to request the suspension of detention or of proceedings against one of its members in accordance with Article 26 of the Constitution, requests to that end shall be automatically included by the Conference of Presidents, as soon as the report of the ad hoc committee has been distributed, in the next sitting reserved by priority by Article 48(2) of the Constitution for questions from members of Parliament and answers from the Government, after those questions and answers. The Conference of Presidents shall take account of this in drawing up the agenda for oral questions. If the report has not been distributed within twenty session days of filing of the request, the matter may be automatically included by the Conference of Presidents in the next sitting reserved by priority by Article 48(2) of the Constitution for questions from members of Parliament and answers from the Government, after those questions and answers.

7. The discussion in open session concerns the committee's conclusions formulated in a motion for a resolution. In the case of a request for the waiving of parliamentary immunity, the motion for a resolution is limited to the facts referred to in the said request only. Only amendments concerning those facts shall be admissible. In all cases, if the committee does not submit conclusions, the discussion concerns the request brought before the Assembly. A motion of referral back to the committee may be tabled and discussed in the manner provided in Rule 91. In the event of rejection of the conclusions of the ad hoc committee that the request should be rejected, the latter shall be deemed to be adopted.

8. The Assembly shall give judgment on the merits of the case after the debate in which only the committee's rapporteur, the Government, the deputy concerned or a member of the Assembly representing him, one speaker for and one speaker against may take part. The request for referral back to the committee, referred to in paragraph 7 above, shall be put to the vote after hearing the rapporteur. In the event of rejection, the Assembly shall then hear the speakers referred to in this paragraph.

9. The Assembly, when it receives a request for the suspension of proceedings against a deputy detained, may decide only to suspend the detention. Rule 100 is applicable to the discussion of amendments submitted pursuant to this paragraph, which alone are admissible.

10. In the case of rejection of a request for suspension of the detention of or proceedings against a deputy, no new request concerning the same facts may be submitted during the course of the session.

General Directive of the Bureau of the National Assembly: Article 16

1. Requests for the waiving of parliamentary immunity shall be sent to the President of the Assembly to be filed at the Bureau of the National Assembly:

2. They must be formulated:

3. 1. By the public prosecutors concerned when a public prosecutor's department is contemplating bringing legal proceedings, either by direct summons or through a preliminary investigation.

4. In this case, the requests of public prosecutors shall be sent to the President of the Assembly by the Minister of Justice.

5. 2. By the injured party when, lodging a complaint, it has associated with the public prosecutor in an action before the competent examining magistrate.

6. In this case, in view of the order of non-investigation which the Public Prosecutor must require of the examining magistrate, the complainant must formulate his request for immunity to be waived, which shall be sent to the President of the National Assembly through the good offices of the public prosecutor and through the Chancellery.

7. 3. By the injured party when it provides proof that it has brought legal proceedings, in the form of a direct summons, and that it is prevented in its action by constitutional immunity.

8. In this case, the complainant must send:

9. - either a writ of summons or copy writ of summons bearing an endorsement by the Public Prosecutor's department certifying its refusal to proceed - in other words to enter the case in the cause list - owing to the inviolability of the party subject to legal proceedings;

10. - or a certified true copy of the judgment whereby the court hearing the action refused to give judgment on the merits of the case owing to the said inviolability.

11. Requests for the waiving of parliamentary immunity, being properly filed, shall be printed with their annexes and distributed. Requests filed during a session shall lapse when they have not been the subject of a decision of the Assembly before the close of that session.

12. Requests for the suspension of proceedings or of detention shall be printed in the form of a motion for a resolution and distributed.

13. The names of the deputies who are the subject of requests for authorization either for the suspension of proceedings or of detention shall not be given in the filing of these requests, but shall be mentioned in the filing of the report and in its inclusion on the agenda of the Assembly.

14. The originators of the request shall be notified of the decisions of the Assembly as regards the waiving of parliamentary immunity. The Prime Minister shall be notified of the decisions of the Assembly as regards the suspension of proceedings or of detention.

Rules of Procedure of the Senate

Rule 105

1. A committee of thirty members shall be appointed, according to the procedure laid down for the appointment of permanent committees, each time the Senate needs to examine either a request for the waiving of parliamentary immunity submitted against a senator, or a motion for a resolution tabled with a view to requesting the suspension of proceedings initiated against a senator or the suspension of his detention.

2. The committee shall elect its officers consisting of a chairman, a vice-chairman and a secretary, and shall appoint a rapporteur.

Ireland

I. The legal basis of parliamentary immunity

The legal basis of parliamentary immunity is embodied in Article 13(10, 12 and 13) of the Constitution.

From a legislative point of view, the Committees of the Houses of the Oireachtas (Privilege and Procedure) Act (1976) establishes, in Article 2, the immunity of parliamentary committees, of the members thereof and that of officials and other persons (experts) participating in parliamentary work.

II. Scope of parliamentary immunity

Immunity protects members of Parliament against any legal action likely to reduce their freedom of speech and action. Article 15(13) of the Constitution, however, mentions exceptions for serious offences (treason, crimes, violation of law and order).

III. Acts covered by parliamentary immunity

The Constitution (Article 15) makes a distinction between the immunity of acts of Parliament ('Oireachtas') and that associated with the members of the two Houses of which it is composed.

Immunity covers all official reports and publications of Parliament or of the Houses, as well as statements made within a House, regardless of where they were made public. As for members of Parliament, they enjoy freedom of movement to go to Parliament unless they have to answer for crimes mentioned by name in Article 15(13). The members of both Houses are protected from any legal measure for opinions expressed, but may be called upon to answer for them before the House where they expressed those opinions. Similar legislative provisions exist for parliamentary committees. It should be noted that within parliamentary committees, immunity covers not only their members but also any officials and experts.

Immunity does not extend to acts done outside the parliamentary mandate, unless those acts can in any way be connected with the privileges established by the Constitution and by law for Parliament and its committees.

IV. Duration of parliamentary immunity

Article 15 of the Irish Constitution establishes first and foremost the immunity of official acts of Parliament (paragraph 12). This immunity involves the non-liability of members of Parliament for all public statements made by them in acts of the 'Oireachtas' and of each of the Houses thereof. It is not of limited duration.

The inviolability of members of Parliament is established by Article 15(13) of the Constitution. This provision prohibits the application to members of Parliament, except for the offences specified therein, of measures to restrict their personal freedom when going to Parliament, sitting therein or returning therefrom. Members of Parliament benefit from this provision throughout the term of their mandates.

V. Procedure for waiving parliamentary immunity

There is no provision stipulating the procedure for the waiving of parliamentary immunity. It should be noted that a member of Parliament accused of having abused his immunity for defamatory acts may repeat his statements outside the House or the place in which the committee meets so as to submit voluntarily to legal proceedings.

VI. Parliamentary practice

According to information available, parliamentary practice concerning the application of Article 15(10, 12 and 13) is practically non-existent.

Nevertheless, two recent cases[28] seem to have increased interest in holding a debate on the scope of these constitutional provisions, at both parliamentary and judiciary level.

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28 Article 15(13) was invoked in 1990 by a senator in order to protect himself from a fine imposed under the Road Traffic Acts and, in 1992, by four members of Parliament who refused to reveal sources of information to the Tribunal of Inquiry into the Beef Processing Industry; the first case was never tried and the second was made the subject of an appeal in the Irish High Court (Cf. Irish Times, 30 March 1990; Senate debates of 5 April 1990 - 'personal explanation by Member'. Cf. Irish Times, 15 December 1992).

ANNEX

Constitution

Article 15

Paragraph 10

Each House shall make its own rules and standing orders, with power to attache penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

Paragraph 12

All official reports and publications of the Oireachtas or of either House thereof and utterances made in either House wherever published shall be privileged.

Paragraph 13

The members of each House of the Oireachtas shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.

Committees of the Houses of the Oireachtas (privilege and procedure) Act, 1976

1. In this Act "a committee" means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas.

2. 1) A member of either House of the Oireachtas shall not, in respect of any utterance in or before a committee, be amenable to any court or any authority other than the House or the Houses of the Oireachtas by which the committee was appointed.

   2) a) The documents of a committee and the documents of its members connected with the committee or its functions,
   b) all official reports and publications of a committee, and
   c) the utterances in a committee of the members, advisers, officials and agents of the committee,

   wherever published shall be privileged.

Italy

I. The legal basis of parliamentary immunity

In Italian legislation, the legal basis of parliamentary immunity is formed by Article 68 of the Constitution. The first paragraph of this article establishes the non-liability of members of Parliament, preventing legal proceedings from being brought against them on account of the opinions expressed and votes cast in the performance of their duties. In this case, accordingly, no sanction may be applied. On the other hand, the second and third paragraphs of Article 68 establish the conditions which have to be satisfied if proceedings are to be brought against a member of Parliament in other situations in which he may incur criminal liability.

Rule 18 of the Rules of Procedure of the Chamber of Deputies and Rule 135 of the Rules of Procedure of the Senate govern the procedures for examination of requests for the waiving of parliamentary immunity.

II. Scope of parliamentary immunity

The non-liability which is established by Article 68(1) of the Constitution protects a member of Parliament from any criminal, civil or administrative proceedings on account of opinions expressed and votes cast in the performance of a member's duties.

Inviolability is prescribed in the other paragraphs of the aforementioned provision of the Constitution: under Article 68(2) of the Constitution, a member of Parliament cannot, without authorization from the Chamber of which he is a member, be made the subject of criminal proceedings, and cannot be arrested or otherwise deprived of personal freedom, or subjected to searching of the person or of premises, unless he is apprehended in the commission of a serious offence for which an arrest warrant is obligatory; according to Article 68(3) of the Constitution, the same authorization is required in order to arrest or to detain a member of Parliament in the enforcement of a verdict, even where the verdict is unappealable.

Attention is drawn to the fact that Article 343(2) of the new Code of Criminal Procedure, issued by Decree of the President of the Republic No. 447/1988, prescribes that 'until such time as authorization shall have been granted, there shall be a prohibition on ordering detention or personal precautionary measures against a person with respect to whom such authorization shall have been prescribed, as well as upon the subjection of such person to searching of the person or of the residence, to personal inspection, to recognizance, to individual identification, to confrontation, or to interception of conversations or communications. It shall be possible to carry out questioning only if the interested party requests the same'.

III. Acts covered by parliamentary immunity

Article 68 of the Constitution establishes, firstly, the non-liability of members of Parliament on account of the opinions expressed and votes cast in the performance of their duties. This prerogative also covers the repetition outside of opinions stated within the precincts of Parliament or expressed in acts of Parliament, and, potentially, all activities which may constitute an antecedent, basis or explanation of such parliamentary function.

The non-liability covers all acts of the member of Parliament which would be liable to give rise to criminal proceedings, except in cases of apprehension in the act of committing an offence.

The protection prescribed by Article 68 of the Constitution directly concerns the office and not the members of Parliament as individuals. Such persons are accordingly liable to proceedings where the Chamber of which they are members grants authorization to take action against them.

IV. Duration of parliamentary immunity

The immunity/non-liability referred to in the first paragraph of Article 68 of the Constitution shall be without limit of time.

With regard to other acts performed prior to or in the course of the mandate, as Article 60 of the Constitution stipulates that the Chamber of Deputies and the Senate of the Republic shall be elected for five years, the members of Parliament are covered by the immunity, understood as a condition upon the possibility of bringing proceedings, during this period, i.e. during the parliamentary term. The immunity takes effect upon the declaration of the names of the members of Parliament, since it is at this time that they 'commence the full exercise of their duties'[29].

With regard to the expiry of immunity, it should be recalled that, in accordance with Article 61 of the Constitution, 'until such time as the new Chambers shall have convened, the powers of the earlier Chambers shall be extended'. In consequence, immunity ceases only when the new Chambers have convened or in the event of the loss, on a personal basis, of the mandate (resignation, cancellation).

V. Waiving of parliamentary immunity

The procedure for the waiving of parliamentary immunity commences with a request for authorization to take action against the member of Parliament. This request must be addressed to the President of the Chamber of which the member of Parliament forms part, by the judicial authority (generally, the Public Prosecutor) and via the Minister of Justice.

Representing the Chambers, appropriate committees are established, appointed by their respective Presidents. In the case of the

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[29]. Rule 1 of the Rules of Procedure of the Chamber

Senate, the appropriate committee is the Committee on Electoral Matters and Parliamentary Immunities[30] (23 senators), and in the case of the Chamber the 'committee for authorization to take action'[31] (21 deputies). These committees have the function of examining the requests for authorization within a period of 30 days (extensible) with effect from their transmission by the President. Before taking a decision, the committee invites the deputy concerned to furnish any explanations which he may consider to be expedient (Rule 18, paragraph one of the Rules of Procedure of the Chamber of Deputies). Rule 135 of the Rules of Procedure of the Senate, paragraph 5, for its part, provides that a senator in respect of whom authorization to take legal proceedings has been requested, and who has not appeared of his own accord before the magistrate to depose in accordance with the Code of Criminal Procedure, may furnish explanations to the committee, which may take the form of written statements.

The competent committee presents a report to the Chamber concerned in which it is proposed to grant or to refuse authorization to take action against the member of Parliament. If the report has not been presented upon the expiry of the prescribed period, the request is entered automatically on the agenda of the Assembly (in the Chamber of Deputies: 'as the first item on the agenda of the second session following that when the period expired'; in the Senate: '... among the matters appearing on the schedule or on the timetable of work in progress').

It is for the Chamber concerned to make a final pronouncement after having been thus informed. However, it must be stated that the authorization granted to commit the member of Parliament for trial does not automatically imply that he can be arrested or can be made the subject of measures restricting his personal liberty. Thus, authorization to place a member under arrest must be expressly requested, over and above that which relates to the power to institute proceedings, and the Chamber must grant a separate authorization.

Only in a case of flagrante delicto is the system of validation of the arrest relevant. However, in such a case, the judicial authority must at the same time request the competent Chamber to grant both authorization to uphold the arrest of the member of Parliament and authorization to take legal action against him.

Article 90 of the act consolidating the laws concerning the election of the Chamber of Deputies of 1957, which is also applicable to the Senate under Article 2 of Law No. 64/1958, provides that 'where a deputy has been placed under arrest having been apprehended in the act of committing an offence in respect of which an arrest order or warrant is obligatory, the Chamber shall decide, within ten days, whether the arrest should be upheld'.

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30. Rule 19 of the Rules of Procedure of the Senate

31. Article 18 of the regulations of the Chamber

The votes of the Chambers on requests for authorization for proceedings shall be taken by secret ballot (Rules 113(3) of the Rules of Procedure of the Senate and 49(1) of the Rules of Procedure of the Chamber of Deputies).

VI. Parliamentary practice

1. Criteria

It is necessary to distinguish between cases of absolute immunity ('insindacabilità') under Article 68(1) of the Constitution and cases of qualified immunity (entailing authorization to take proceedings) under Article 68(2) of the Constitution.

It should be stated from the outset that in the XIth legislative term, which commenced on 7 June 1992, the committee of the Chamber of Deputies for granting authorization to take proceedings adopted an interpretation which was more restrictive, with regard to both Article 68(1) and Article 68(2).

In the past, in fact, the first case was considered to cover not only, naturally, acts performed in the exercise of parliamentary duties, but also acts which constituted a manifestation of parliamentary duty (so-called external projection of the parliamentary mandate). Accordingly, 'opinions expressed in the exercise of duties' also encompassed opinions given outside the typical duties of a member of Parliament but linked to these by a close subjective, objective or temporal connection: for example, the repetition, at a press conference or in a newspaper article, of statements made in a debate in Parliament or written in the text of an interview.

According to the new interpretation, it is intended to give a narrower connotation to the concept of external projection, limiting it to those acts amounting to mere reproduction of typical acts (for example resolutions, interpellations, questioning) implemented within the precincts of Parliament and conversely excluding those acts which, although of a generally political nature, could not be attributed to parliamentary acts in the strict sense.

As regards the second paragraph also, it has been possible to observe, in the case of the Chamber of Deputies, a kind of trend reversal as compared with the position which had previously become established.

In the past, in fact, for the purposes of refusal or granting of authorization to subject a member to criminal proceedings within the meaning of Article 68(2) of the Constitution, the Chamber and the Senate tended to follow the following categories of judgment:

1) the existence or non-existence of '*fumus persecutionis*' on the part of the magistrate hearing the case against the member of Parliament. '*fumus persecutionis*' has two meanings: in the subjective sense, the malevolent intention ('malice') of unjustly harming the member of Parliament or the action of

the magistrate being in the nature of a pretext; in the objective sense, it indicates, with reference to the criminal action, negligence and carelessness or suspicious circumstances and actions. '*fumus persecutionis*', as a symptom of a real situation, certainly cannot be defined by attaching it to an unequivocal criterion of individual assessment. At all events, Parliament generally has recourse to such a category of judgment where there is an overall set of evidential indications revealing an attitude on the part of the magistrate which might bring about a political persecution in relation to the member of Parliament;

2) the manifestly unfounded nature of the accusation;

3) the intrinsic nature of the offence in respect of which proceedings are being brought, with reference to offences involving opinions and to acts committed on the occasion of political demonstrations or of activities which, broadly, may be defined as being of a socio-economic nature: in these cases, quite apart from the existence of '*fumus persecutionis*' or from the manifestly unfounded nature of the accusation, authorization to bring proceedings is refused usually making reference to the concept of a broadly political activity in which Parliament is indirectly involved.

According to the new position adopted by the Chamber, only the existence of '*fumus persecutionis*' in the dual meaning set forth above can justify refusal of authorization. A simple case of a manifestly unfounded accusation, unless accompanied by other elements such as to give rise to the presumption of '*fumus persecutionis*', is not sufficient, per se, to substantiate such refusal. With regard to the third criterion adopted previously, the committee, invoking the new position adopted in the present legislature, has decided not to extend refusal to cases in which consideration was given only to the intrinsic nature of the offence, unless the essential elements of absolute privilege under Article 68(1), according to the interpretive criteria listed above, were also included.

Incidentally, it should be added that a request for withdrawal of the privilege is simply referred back to the magistrate, without a decision in favour or against, where one of the three essential elements - identified defendant, charge and *actus reus* - is absent.

With regard to the Senate, no recent development has taken place in the practice followed with respect to such requests. The Committee on Electoral Matters and Parliamentary Immunities, after having discussed whether to adopt criteria and which criteria to adopt, unanimously ruled out the expediency of establishing rigid and explicit criteria, reserving the right to make an assessment on a case-by-case basis, in view of the political and non-judicial nature of judgment concerning a request for a waiver of immunity.

2. Debate on the reform of parliamentary immunity

The bodies governed by Article 68 of the Constitution have during recent years been the subject of an intense debate centred in particular on the use - not always considered to be beyond criticism - which the Chambers make of the tool of authorization to bring proceedings and on the content of a possible reform.

As long ago as the IXth and Xth legislative terms, numerous bills for reform of Article 68 had been submitted.

During the XIth legislative term, the Chamber of Deputies established, on 12 May 1992, a 'Special Committee for examining the bills concerning the reform of parliamentary immunity'. After having examined 11 bills for the amendment of Article 68, the committee concluded its own work at the session held on 25 June 1992, with the approval of a unified text. The Chamber examined the text, making a few amendments, and approved it at first reading at the session held on 22 July 1992.

The reform provides, firstly, for an amendment to the system of absolute immunity (Article 68(1)), replacing the expression 'may not be prosecuted' by the wording 'may not be called upon to answer': thus, explicit reference is made not only to criminal liability, but also to civil and administrative liability.

As regards inviolability (Article 68(2) and (3)), confirmation is given of the need for the authorization of the relevant Chamber for personal or domiciliary searches and measures which have the effect of restricting personal liberty. However, such authorization is not required in order to enforce an unappealable sentence, or where the member of Parliament has been apprehended in the act of committing an offence for which obligatory arrest in flagrante delicto is prescribed.

To initiate criminal proceedings, it will no longer be necessary to make an express request for authorization to bring such proceedings. However, where the Public Prosecutor's office decides to bring a criminal action, it will be obliged to notify this immediately to the relevant Chamber. Such notification will result in the suspension of the proceedings for ninety days; within this term, classified as 'peremptory', the Chamber will have to decide - by resolution with a statement of reasons and by an absolute majority of its members - whether or not to order the suspension of the criminal proceedings for the entire duration of the mandate. The resolution for suspension of the proceedings must be taken 'to guarantee the unfettered nature of parliamentary duty'. The text approved by the Chamber of Deputies was passed to the Senate on 23 July 1992. As at 19 November 1992, it was under examination by the First Committee (Constitutional Affairs).

3. Statistical data concerning requests for authorization to bring proceedings

CHAMBER OF DEPUTIES

Summary statement of the data relating to the Xth legislative term (1987-1992)

Requests for authorization to bring proceedings received: (including 6 not announced in the Chamber)	no.	262
Requests decided by the Chamber with the result of authorization:	no.	31
Requests decided by the Chamber with the result of refusal:	no.	100
Requests decided by the Chamber with the mixed result authorization/refusal:	no.	3
Requests decided by the Chamber with the mixed result refusal/authorization:	no.	1
Requests decided by the Chamber with the mixed result refusal/referral:	no.	1
Requests referred by the Chamber for absolute immunity under Article 68(1) of the Constitution:	no.	10
Requests referred by the Chamber for various reasons:	no.	28
Total number of requests for authorization to bring proceedings which were decided	no.	174
Requests decided by the Committee for authorization to bring proceedings, pending before the Chamber:	no.	6
(2 proposals for authorization, 2 proposals for refusal, 1 proposal for referral of the files on account of absolute immunity under Article 68(1) of the Constitution, 1 mixed proposal for refusal/referral)		
Requests pending before the Committee:	no.	82
Total number of requests still pending:	no.	88

Summary statement of data relating to the XIth legislative term (which commenced on 7 June 1992) (as at 30 November 1992)

Request for authorization to bring proceedings received:	no.	131
Decided by the Chamber with the result of authorization:	no.	33
Decided by the Chamber with the result of refusal:	no.	8
Decided by the Chamber for absolute immunity under Article 68(1) of the Constitution:	no.	9
Referred by the Chamber for various reasons:	no.	5
Decided by the Chamber for various reasons:	no.	2
Total number of requests for authorization to bring proceedings which were decided: (decided with a result different from the proposal by the Committee: no. 4)	no.	57
Requests for authorization for arrest which were decided by the Chamber:	no.	1
(with the result of refusal)	no.	1
Requests for authorization to bring proceedings which were decided by the Committee and are pending before the Chamber:	no.	26
(16 proposals for authorization, 6 proposals for refusal, 4 proposals for referral for absolute immunity under Article 68(1) of the Constitution)		
Requests for authorization for arrest which were decided by the Committee and are pending before the Chamber:	no.	1
(proposal for refusal):	no.	1
Requests pending before the Committee:	no.	48
Total number of requests still pending:	no.	74
Requests for authorization received in respect of ministerial offences:	no.	1

SENATE

Xth legislative term

Cases involving authorization to bring proceedings

Resolved by the Senate:	no.	101
1) Granted:	no.	12
2) Refused:	no.	86
3) Referred to the judicial authority as lacking the procedural file:	no.	1
4) Referred as a result of absolute immunity under Article 68(1) of the Constitution **** :	no.	1
5) Referred as a result of withdrawal of action:	no.	1
6) Referred because the Senate had already made a pronouncement:	no.	1
A) Proposals by the Committee which were approved:	no.	90
B) Proposals by the Committee which were not approved:	no.	9

XIth legislative term

Meetings of the Committee on Electoral Matters and Parliamentary Immunities	no.	26
Requests submitted:	no.	56
Requests deferred:	no.	49
Resolved by the Committee:	no.	33
1) Proposals for authorization:	no.	10
- resolved unanimously:	no.	
- resolved by majority:	no.	10
- resolved with equality of votes:	no.	
2) Proposals for refusal:	no.	23
- resolved unanimously:	no.	5
- resolved by majority:	no.	18
- resolved with equality of votes:	no.	
Not resolved by the Committee:	no.	23
Resolved by the Committee but not by the Senate:	no.	20
Resolved by the Senate:	no.	13
1) Granted:	no.	7
2) Refused:	no.	6
A) Proposals by the Committee which were approved:	no.	12
B) Proposals by the Committee which were not approved:	no.	1

**** already included in the number of cases of refusal of authorization, as this in part amounts to a refusal.

CONSTITUTION

Article 68

Members of Parliament may not be prosecuted on account of the opinions expressed and the votes cast in the performance of their duties.

Without authorization from the Chamber to which the member belongs, no member of Parliament may be subjected to criminal proceedings; nor may he be arrested or otherwise deprived of personal liberty, or subjected to personal or domiciliary searching, except where he has been apprehended in the act of committing an offence in respect of which an arrest order or warrant is obligatory.

The same authorization shall be required in order to arrest or to detain a member of Parliament in enforcement of a judgment, including an unappealable judgment.

Rules of Procedure of the Senate

Rule 19[1] - Committee on Electoral Matters and Parliamentary Immunities

1. The Committee on Electoral Matters and Parliamentary Immunities shall be composed of twenty-three Senators and the chair shall be taken by a Senator whom the committee shall elect from among its own members.

2. The Senators appointed by the President of the Senate to make up the committee shall not be able to refuse such appointment, and shall not be able to resign therefrom. The President of the Senate may replace a member of the committee who is unable, for serious reasons, to participate, over a prolonged period, in the meetings of the aforementioned committee.

3. Where the committee, although repeatedly convened by its chairman, has not met for more than one month, the President of the Senate shall make arrangements to appoint new members thereof.

4. The committee shall proceed to check, in accordance with the criteria laid down in the Rules of Procedure, the admission qualifications of the Senators and the additional circumstances of ineligibility and of incompatibility; it shall, upon request, report to the Senate on any irregularities in the electoral procedures which it may have detected in the course of such checks.

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[1]. Article amended by the Senate on 17th November 1988 and, restricted to paragraph 3, on 7th June 1989; further amended on 23rd January 1992 with the insertion of paragraphs 2 and 3 (consistently coordinated text).

5. It shall also be a matter for the committee to examine the requests for authorization to bring proceedings which are submitted under Article 68 of the Constitution and to report to the Senate on the files transmitted by the judicial authority, in connection with authorization to bring proceedings in respect of the offences referred to in Article 96 of the Constitution and on the requests for authorization which are submitted under Article 10(1) of Constitutional Law No. 1 of 16 January 1989.

6. The regulations concerning the checking of powers as prescribed by paragraph 4 shall be proposed by the Committee on the Rules of Procedure, having heard the Committee on Electoral Matters and Parliamentary Immunities, and shall be adopted by the Senate by an absolute majority of its members.

Rule 135 - Examination of the requests for authorization to bring proceedings which are submitted under Article 68 of the Constitution[2]

1. The requests for authorization to bring proceedings which are passed to the Senate shall be referred by the President for examination by the Committee on Electoral Matters and Parliamentary Immunities, in accordance with Rule 19. The competent Minister shall transmit to the said committee those documents which shall have been requested from him.

2. The committee shall only not give a decision on a request for authorization to bring proceedings where the Minister advises that the pertinent proceedings have ceased.

3. The presence of at least one-third of the members is prescribed in order that meetings of the committee shall be valid, where the committee has met for the purpose of examining cases involving authorization to bring proceedings.

4. All the files and documents passed to the committee which relate to requests for authorization to bring proceedings may be examined only by the members of the aforementioned committee and at a meeting of the latter.

5. A Senator in respect of whom authorization to bring legal proceedings has been requested and who has not appeared of his own accord before the magistrate to make declarations under the code of criminal procedure may furnish clarifying comments to the committee, which may include written statements.

6. If the request for authorization to bring proceedings relates to the offence of contempt of the legislative Assemblies, the committee may appoint one or more of its members to carry out a preliminary examination jointly with

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[2]. Rubric amended by the Senate on 7th June 1989.

representatives of the competent committee of the Chamber of Deputies.

7. The committee must report to the Senate within a period of thirty days from the date of service of the request, except where it has been granted, and on one occasion only, a new term which shall not exceed the original term.

8. Where the report has been submitted or the term as specified in the preceding paragraph has elapsed without positive effect, the request shall be included among the matters entered upon the schedule or upon the programme of work in progress.

9. The submission of minority reports shall be accepted in all cases.

10. The Senate shall resolve upon the proposal of the committee or, failing such proposal, upon the request for authorization, having heard the advisory report of the chairman of the committee or of another member of the committee expressly appointed by the same.

11. The provisions of the preceding paragraphs shall be observed, where applicable, in respect of all cases of authorization requested from the Senate under Article 68 of the Constitution.

Rules of Procedure of the Chamber of Deputies

Rule 18

1. The Committee for granting authorization requested under Article 68 of the Constitution shall be composed of twenty-one deputies appointed by the President of the Chamber as soon as the parliamentary groups have been constituted. This committee shall report to the Chamber, within the express term of thirty days from the transmission effected by the President of the Chamber, on the requests for subjection to criminal proceedings and on the coercive measures affecting personal or domiciliary liberty as concerning deputies. With respect to each case, the committee shall formulate, with a report thereon, a proposal for granting or refusal of such authorization. Before resolving upon the matter, the committee shall invite the deputy concerned to furnish any clarifying comments which he may consider to be expedient.

2. In the event that the term prescribed in paragraph 1 shall have elapsed without the report having been submitted, and without the committee having requested an extension of such term, the President of the Chamber shall appoint a rapporteur from among the members of the committee, authorizing him to report orally, and enter the request as the first item on the agenda at the second session following that at which the term expired.

3. The procedure prescribed in the preceding paragraphs shall also be applicable where the request for authorization to bring proceedings relates to the offence of contempt of the legislative Assemblies. In such a case, the committee may appoint one or more members to carry out a preliminary examination jointly with appointees of the competent committee of the Senate.

4. At the first meeting, the committee shall elect a chairman, two vice-chairmen and three secretaries, and shall perform its own functions on the basis of internal regulations which, following examination by the Committee on the Rules of Procedure, must be approved by the Chamber in accordance with the procedures described in Rule 16(4).

Luxembourg

I. The legal basis of parliamentary immunity

The legal basis of parliamentary immunity is embodied in Articles 68 and 69 of the Constitution. The first establishes the principle of non-liability of members of Parliament for opinions expressed and votes cast while carrying out their duties. The second sanctions the inviolability of members of Parliament.

Rules 159 to 166 of the Rules of Procedure of the Chamber of Deputies govern the procedure for the examination of requests for the waiving of parliamentary immunity.

II. Scope of parliamentary immunity

The non-liability of members of Parliament is total, inasmuch as it extends to all activities of deputies 'while carrying out their duties', not only at plenary sessions, but also in meetings of committees and political groups and during missions abroad. This immunity prevents the deputy from being exposed to repressive punishments or pecuniary redress.

Inviolability has the effect of suspending measures for the deprivation of individual freedom and acts of legal proceedings not authorized by the Chamber, except in the case of flagrante delicto.

III. Acts covered by parliamentary immunity

Since non-liability covers only opinions expressed and votes cast by a member of Parliament while carrying out his duties, the latter may be subject to legal proceedings for statements made in a personal context outside the benches of the Chamber, even if they have been proffered on Parliament premises. A member of Parliament may also be subject to legal proceedings for opinions expressed by him outside Parliament, such as during public meetings or through the press, even if those opinions reflect those expressed by him on the benches of Parliament.

As regards Luxembourg's jurisprudence, two decisions relating to Article 68 of the Constitution should be mentioned:

- '...from the expression 'while carrying out his duties' we must deduce that if the deputy voluntarily leaves the limited ground in which his impunity is assured for the floor of the court, he is placing himself outside the special situation provided for in the Constitution.

  Consequently, if a deputy has instituted a civil action for violation of the press laws, he cannot hide behind his immunity

to paralyse the rights of defence of the person he is suing' (Court (appeal) 25 March 1904. Pas. 8, p. 395).

- 'The sole purpose of parliamentary immunity, as sanctioned by Article 68 of the Constitution, is to guarantee and safeguard the deputy's person. The article in question is not applicable if the deputy is summoned as a witness, on the facts reported by him in a speech made in the Chamber, in an inquiry directed not against him, but against a third party' (Court (appeal) 12 March 1919. Pas. 10, p. 331).

Moreover, a judgment of 11 July 1991 of the Luxembourg City District Court, ruling on an appeal, held that:

'If the non-liability of members of the Chamber of Deputies covers all things relating to their parliamentary conduct, if the carrying out of duties means everything connected with parliamentary activity, it follows that the privilege of non-liability does not concern opinions which have nothing to do with their duties. Parliamentary immunity does not, therefore, cover a deputy in the exercise of his political and partisan activities. Outside the parliamentary enclosure, the representative is not covered by non-liability for opinions stated which clearly relate to his activities as a politician, but which could also be expressed by a non-member of Parliament'.

Inviolability covers all acts of the member of Parliament liable to proceedings under criminal law, except for cases of flagrante delicto. Consequently, during sessions of Parliament, no deputy may be subject to legal proceedings, arrested or subject to measures for the privation of freedom without the authorization of the Chamber.

It should be noted that inviolability does not prevent action being taken against a member of Parliament in civil proceedings and for minor offences. In such a case, in fact, the law does not provide for preventive arrest and any sentence would not be injurious to the reputation of the member of Parliament.

With regard to the concept of 'act of proceedings', we would mention the follow decision, dating from 1960:
'Any unauthorized act of proceedings against a member of Parliament except in the case of flagrante delicto is absolutely null and void.

A summons in intervention coming from an accused person, subject to legal proceedings as printer of a newspaper by virtue of an alleged violation of the press laws, does not constitute an act of proceedings when the accused limits himself to establishing after full argument on both sides between the parties to the civil action and the person whom he had named as the author of the offending article the reality of his statement, since no party has concluded in favour of either the conviction or the taking into custody of the accused author placed in intervention.

Such a summons in intervention issued to a member of Parliament does not affect the rights guaranteed the deputy under the Constitution, which only prohibits proceedings proper' (Court 21 October 1960. Pas. 18, p. 164).

IV. Duration of parliamentary immunity

The non-liability of members of Parliament, established by Article 68 of the Constitution, operates without a time limit. It protects the member of Parliament both during the exercise of his mandate and after expiry thereof.

Inviolability (Article 69 of the Constitution), on the other hand, the aim of which is to prevent vexatious actions with regard to members of Parliament, can only be claimed during the sessions of Parliament. Traditionally, the annual session of Parliament, as provided for in Article 72 of the Constitution, begins on the second Tuesday in October and ends on the second Tuesday in October of the following year (Rule 1 of the Rules of Procedure of the Chamber of Deputies).

V. Procedure for waiving parliamentary immunity

Requests for authorization of proceedings against members of Parliament may be sent to the Chamber by the Minister for Justice or the Public Prosecutor's department, who pass on their requests through the Prime Minister or the alleged injured party or the deputy himself.

By virtue of Rules 159 ff. of the Rules of Procedure of the Chamber of Deputies, a special committee is set up for each request for authorization of proceedings against a member of Parliament or for each request for the suspension of proceedings already in progress or for the suspension of detention.

This committee informs the member in question and obtains his explanations. The member may be assisted or represented by one of his colleagues. If the deputy in question is detained, the committee may arrange for him to be heard in person by one or more of its members delegated for that purpose.

The committee receiving a request for suspension of detention or of proceedings may also hold a hearing of the author or first signatory of the proposal.

Having concluded its work, the committee submits a report to the Chamber in the form of a motion for a resolution. The report is examined by the Chamber in closed session.

Voting is carried out by secret ballot and each deputy taking part in the vote may represent an absent colleague, by means of a written proxy.

The Chamber's decision is announced at the next open session.

In the event of rejection of a request for authorization of proceedings or of suspension of detention of a member of the Chamber, no new request, concerning the same facts, may be submitted during the course of the same session.

The waiving of parliamentary immunity is special and is valid only for the facts on which the request for the waiving of immunity was based.

VI. Parliamentary practice

A certain number of criteria have been used regularly in the past to assess requests for the waiving of parliamentary immunity, namely:

- whether the facts, assuming that they are established, may be considered as constituting an infringement;
- whether the deputy is in fact responsible for them;
- whether the proceedings are not inspired by malevolence or by the desire to upset a political opponent;
- whether the request is not based solely on a desire to prevent a member of Parliament from carrying out his duties normally or on a desire to discredit him in the eyes of the public;
- whether the facts, assuming that they are established, are sufficiently serious to justify the waiving of immunity.

With regard to this last point, the Chamber of Deputies generally considers that one should ask oneself, as it is a matter falling within the criminal law, whether the facts constitute first and foremost a disturbance of law and order and of the general interest or whether they affect a particular interest. In the latter case, in fact, the particular interest can very easily be defended from a civil point of view, for which parliamentary immunity does not operate, whereas criminal proceedings are only deferred in any case.

ANNEX

Constitution

Article 68

No deputy shall be subject to legal proceedings or investigations for opinions expressed and votes cast by him while carrying out his duties[35].

Article 69

1. No deputy shall, for the duration of the session, be subject to legal proceedings or arrested for a criminal offence without the authorization of the Chamber, except in the case of flagrante delicto.

2. No physical constraint may be exercised against one of its members, during the session, without the same authorization.

3. The detention or prosecution of a deputy shall be suspended during the session and for the entire duration, if the Chamber so requires.

Rules of Procedure of the Chamber of Deputies

Rule 130

A special committee shall be set up for each request for authorization of proceedings against a member of the Chamber or for each request for the suspension of proceedings already in progress or for the suspension of detention, as provided for in Chapter 5, section I, of the Rules of Procedure of the Chamber.

Requests concerning related facts shall be attached.

Rule 131

The rules applicable to the running of the committee are those set out in the abovementioned provisions.

A member of the committee may not, however, be replaced.

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[35] Cf. Victor Wilhelm's bill for the interpretation of Article 68 of the Constitution. Report 1926 - 1927, 224.

Rule 132

The committee shall inform the member in question and hear his explanations. He may be assisted or represented by one of his colleagues.

Rule 133

The committee receiving a request for the suspension of detention or of proceedings may hold a hearing of the author or first signatory of the proposal and the deputy in question or the colleague chosen by him to represent him. If the deputy in question is detained, it may arrange for him to be heard in person by one or more of its members delegated for that purpose.

Rule 134

The committee shall submit a report to the Chamber in the form of a motion for resolution. The report shall be examined by the Chamber in closed session.

Rule 135

Voting shall take place by secret ballot. Each deputy taking part in the vote may represent an absent colleague, by means of a written proxy.

Rule 136

The decision to waive or to refuse to waive parliamentary immunity taken by the Chamber shall be announced at the next open session.

Rule 137

In the event of refusal of a request for authorization or suspension of proceedings or for suspension of detention of a member of the Chamber, no new request concerning the same facts may be submitted during the course of the same session.

Netherlands

I. The legal basis of parliamentary immunity

The new Constitution of the Kingdom of the Netherlands ('Grondwet'), which came into force in February 1983, establishes in its Article 71 that members of the States General, ministers, secretaries of State and other persons taking part in debates shall not be subject to legal proceedings or be otherwise considered responsible for any opinion expressed during meetings of the States General or of the committees thereof or for any opinion submitted to them in writing. There is no other provision of law or customary law governing this matter.

Article 71 replaces the former Article 107, the wording of which dated from 1887, albeit with a 1928 amendment which extended immunity to ministers and government officials designated among them.

The Rules of Procedure of the Chambers of the States General do not deal in specific terms with parliamentary immunity.

II. Scope of parliamentary immunity

The scope of parliamentary immunity extends, in the cases in which it applies, both to civil jurisdiction and to criminal jurisdiction. By virtue of the immunity, members of parliament, (as well as ministers), are not subject to legal proceedings for opinions expressed in writing or orally. These opinions or statements may also concern facts which are not directly connected with the subjects discussed.

III. Acts covered by parliamentary immunity

All acts done by deputies while carrying out their mandates are covered by parliamentary immunity, whether it be in plenary session or during committee meetings. Whether these acts have been done inside or outside Parliament is immaterial. On the other hand, acts which cannot be linked to the exercise of the parliamentary mandate are excluded.

The Rules of Procedure of the Chambers of the States General lay down penalties for any members abusing their immunity by uttering insults when speaking in Parliament.

IV. Duration of parliamentary immunity

Immunity may be invoked by members of Parliament only during the period of activity of the Chambers. The ordinary session of the States General begins on the third Tuesday in September of each year and lasts in practice the whole year, with short adjournments.

V. Procedure for waiving parliamentary immunity

There is no specific procedure for cases of waiving parliamentary immunity. The immunity provided for in Article 71 of the Constitution does not include any limitation to the conditions required in order to be able to take action against a member of Parliament, since it restricts itself to establishing his non-liability. Since 1848, the authorization of Parliament is no longer necessary in order to bring proceedings against a member of Parliament who has abused his mandate. Furthermore, a law of 1884 gave members of Parliament the same status as ordinary citizens as regards proceedings and enforcement of a sentence for offences under ordinary law. On the other hand, as regards offences committed by members of Parliament in connection with the exercise of their mandates, the Supreme Court ('Hoge Raad') is responsible for adjudicating on them.

VI. Parliamentary practice

Information not available.

Constitution

Article 71

Members of the States General, ministers, secretaries of State and other persons taking part in debates shall not be subject to legal proceedings or be otherwise considered responsible for any opinion expressed during meetings of the States General or of the committees thereof or for any opinion communicated by them in writing.

Portugal

I - THE LEGAL BASIS OF PARLIAMENTARY IMMUNITY

The basic principles on this subject are embodied in Article 160 of the Constitution and are reproduced in the Rules for Deputies (Law No. 3/85, of 13.03.1985), in Rule 10 (non-liability) and in Rule 11, Nos. 1 and 2 (inviolability).

The Rules of Procedure of the Assembly of the Republic[36], in Rule 3 thereof, leave the regulation of this subject to the Rules for Deputies. The only specific reference to the institution, of immunities is found in Rule 35 of the Rules of Procedure: The Committee on the Rules of Procedure and Parliamentary Mandates is responsible for: (...) b) passing judgment on the waiving of immunities, in accordance with the Rules for Deputies'.

At the present time (November 1992), a parliamentary reform is being debated involving, in the short term, a revision of the existing Rules of Procedure and of the Rules for Deputies. It is not, however, expected that any major changes will be made to the existing system relating to parliamentary immunity.

II - SCOPE OF PARLIAMENTARY IMMUNITY

Article 160(1) 1 of the Constitution sanctions the so-called non-liability of deputies by stipulating that the latter cannot be held liable under civil, criminal or disciplinary proceedings for 'votes and opinions expressed by them in the exercise of their duties'.

In addition to deputies, non-liability also appears to cover parliamentary groups themselves, which are also involved in parliamentary activity and which, as such, also express opinions for which they are likely to be held criminally or civilly liable.

Article 160(2) and (3) of the Constitution sanction so-called inviolability, in the case of the practice of certain acts subject to criminal reprimand and committed in their capacity as ordinary citizens.

The scope of inviolability is not general: a) contrary to what happens as regards non-liability, which is intended to be used in the civil, criminal and disciplinary domains, the Constitution links inviolability only to criminal procedure; b) there are cases in which a deputy may be arrested or tried without any authorization from the Assembly of the Republic.

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[36] Official Gazette, 1st Series - A, No. 87, of 15 April 1991.

Rule 4(1)(b) of the Rules for Deputies provides that criminal proceedings, in accordance with Articles 11 and 160 of the Constitution, require the suspension of the mandate. Rule 6(1)(b) further establishes that in these cases the lifting of the suspension should take place via acquittal (judicial) or equivalent decision, or through the carrying-out of the punishment.

III - ACTS COVERED BY PARLIAMENTARY IMMUNITY

Non-liability implies that 'deputies cannot be liable, as a result of votes and opinions [expressed in the exercise of their duties], for so-called 'offences of responsibility'[37], or for any others, including 'offences of defamation'[38].'

The aim, above all, is to safeguard independence in the exercise of the parliamentary mandate, by ensuring the free expression by deputies of 'any declarations, statements, opinions, requests, judgments and, in general, spoken or written manifestations of thought produced in the exercise of parliamentary duties'[39].

According to Article 160(2) of the Constitution, deputies may be detained or arrested without authorization from the Assembly only when the following conditions prevail together: detention in flagrante delicto; and detention for a deed which constitutes an offence punishable with imprisonment of more than three years. It will be understood, then, that only this scenario, owing to its special circumstances and extreme seriousness, justifies the non-intervention of Parliament. If only one of these conditions prevails, the authorization of the Assembly is not granted.

Although it is not expressly stated in the wording of this precept of the Constitution, it seems obvious that the application of immunity should be restricted to cases of preventive detention or arrest: in actual fact, in the case of the carrying-out of a prison sentence, a legal conviction already exists, which removes the fundamental reason for immunity, which is to prevent the unlawful and arbitrary prosecution of deputies[40].

It can be seen from Article 160(3) of the Constitution that, in the case of an offence not punishable with imprisonment of more than

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[37] Offences committed by holders of a political office in the exercise of their duties, as defined in Article 2 of Law No. 34/87, of 16 July.

[38] Gomes Canotilho and Vital Moreira, Constituição da Republica Portuguesea Anotada, vol. 2, p. 171.

[39] Opinion No. 5/80, of 21.02.1980, of the office of the Attorney-General of the Republic.

[40] In this connection, see Isaltino Morais, Ferreira de Almeida and Leite Pinto, in 'Constituição da República Portuguesa Anotada e Comentada' (1983).

three years, the deputy may be tried only if the Assembly of the Republic suspends him for that purpose.

Inviolability does not cover the initiation of the judicial proceedings or the practice of the procedural acts of the investigative stage. It is decided that, after the definitive charge, the case does not continue if the deputy is not suspended.

IV - DURATION OF IMMUNITY

Parliamentary immunity is valid for the entire duration of deputies' mandates even outside the period when the Assembly of the Republic is actually sitting (during recesses or suspension of the legislative session and during the period of dissolution of the Assembly, in which cases the latter's jurisdiction is exercised by the Permanent Committee of the Assembly - Article 182 of the Constitution).

The parliamentary mandate begins with the first meeting of the Assembly of the Republic after an election and ends with the first meeting after subsequent elections, without prejudice to the suspension or individual cessation of the mandate (Rule 1(1) of the Rules of Procedure of the Assembly; Article 156(1) of the Constitution).

In the case of Article 160(1) of the Constitution (non-liability of deputies), immunity is effective not only during the term of the mandate, but also after the end of it, whenever liabilities or acts or opinions expressed during the exercise of the mandate are invoked.

V - PROCEDURE FOR WAIVING PARLIAMENTARY IMMUNITY

Rule 35 of the Rules of Procedure makes the Committee on the Rules of Procedure and Parliamentary Mandates responsible for passing judgment on the waiving of immunities, in accordance with the Rules for Deputies.

For the purposes of the preparation of this opinion, the President of the Assembly of the Republic decides to refer down to the Committee on the Rules of Procedure and Parliamentary Mandates requests for the waiving of parliamentary inviolability received from the competent authorities, as well as any accompanying supporting documents.

The Rules of Procedure do not contain any specific provisions stipulating different treatment for the organization of the Committee's tasks relating to the examination of requests for the waiving of parliamentary immunities.

The meetings of the Committee on the Rules of Procedure and Parliamentary Mandates are not public (nor are those of the other parliamentary Committees) unless otherwise stipulated (Rule 118 of the Rules of Procedure of the Assembly).

After the deputy in question has been called upon to state his case (usually in writing), the rapporteur appointed draws up the relevant opinion, which is at once subject to discussion and approval (voting on the committee does not take place by secret ballot).

Decisions on requests for the waiving of parliamentary immunities (or any others relating to deputies' mandates) are included by the President of the Assembly in part one of the agenda at plenary meetings (Rule 64 of the Rules of Procedure). The Committee's opinion is passed on to the plenary session, and the general result of the voting to which it was subject on the Committee on the Rules of Procedure and Parliamentary Mandates is also reported.

The decision of the plenary session on the granting of authorization for the arrest of a deputy, or on the suspension or otherwise of the parliamentary mandate, for the purposes of continuing with the proceedings, is taken by secret ballot and absolute majority of deputies present (Rule 11(3) of the Rules for Deputies).

It is quite clear from both legal opinion and parliamentary jurisprudence that the decision of the Assembly must not be based on any opinion (or debate) on the merits of the case, which falls within the competence of the courts, but should be limited to the assessment of the 'public, political and moral suitability of the proceedings'. The decision of the Assembly on the deputy's suspension does not imply recognition of the procedural validity of acts submitted to it, nor recognition of the deputy's culpability or non-culpability.

VI - PARLIAMENTARY PRACTICE

The Assembly of the Republic (which, moreover, appears always to have abided by the opinions on this subject of the Committee on the Rules of Procedure and Parliamentary Mandates) applies an extremely broad concept of parliamentary immunity, and there is a predominant, if not unanimous, understanding that the waiving thereof may be authorized only in exceptional cases. This conclusion is clearly corroborated by the Assembly's practice on this subject: according to information available[41], the decision has never been made to this day, in accordance with Article 160 of the Constitution, to suspend any deputy's mandate.

As regards the definition of exceptional cases, in other words, cases in which waiving of the immunity would be justified, parliamentary precedent does not seem to be particularly well developed and is not sufficiently systematized. However, from various opinions of the Committee on the Rules of Procedure and Parliamentary Mandates, which received the favourable vote of the plenary session, it seems to be possible to conclude that, on the basis of the above-mentioned theoretical conjectures, some guiding criteria have persisted for the Assembly's decisions on this subject. According to those criteria, immunity should only be waived, in particular:

- 'in serious cases, by which shall be understood those involving an element of ostensible public scandal, which affects the Assembly (calling its reputation into question) rather than the deputy himself';

- 'in cases which, owing to their nature and circumstances, require urgent evaluation in court'.

The adoption of a criterion based only on the verification of the existence of the so-called '<u>fumus persecutionis</u>' is considered insufficient and dangerous, insofar as the deputy must not be removed from his duties unless there are serious grounds. Moreover, because the evaluation of the seriousness of those grounds must not involve an inquiry, analysis or debate on the merits of the case brought to trial (which come within the competence of the courts), that seriousness must be considered in terms of the above-mentioned guiding criteria (reflection on the Assembly's reputation and the urgent need for its evaluation in court).

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[41] It has not been possible to obtain official statistics on this subject.

Some special aspects:

a) Article 161(1) of the Constitution

This provision establishes the prior authorization to be granted by the Assembly to deputies in order that they may state their case as defendants or suspects in judicial proceedings (when they have not been arrested in flagrante delicto and are not suspected of an offence punishable with imprisonment of more than three years).

Rule 13 of the Rules for Deputies, under the heading 'rights and privileges of deputies', establishes (reproducing, in this first part, Article 161(1) of the Constitution) that 'deputies may not, without the authorization of the Assembly of the Republic, be jurors, experts or witnesses'; it adds, however, that without such authorization deputies may also not 'state their case as declarants or as defendants except, in the latter case, when arrested in a case of flagrante delicto or when suspected of an offence punishable with a sentence of more than three years'. Article 161(2) provides that this authorization of the Assembly, or the refusal thereof, should be preceded by a hearing of the deputy's case.

The Committee on the Rules of Procedure and Parliamentary Mandates has often decided, with the favourable vote of the plenary session, to grant the said authorization, but usually only at the inquiry or investigative stage and when that is the wish of the deputy in question.

Article 161(1) of the Constitution has been interpreted as embodying not an immunity but, rather, a right or guarantee given to the deputy in the sense that it enables him to carry out his duties in a regular, normal way[42]. This interpretation and practice are, moreover, in keeping with the heading of Article 161 ('Rights and Privileges') which makes clear the possibility or freedom for deputies to exercise them or not as they see fit for the carrying-out of their mandate. This reason for existence of the precept also explains why the right in question is attributed only to the deputy during the period when the Assembly of the Republic is actually sitting, thereby excluding the recesses and suspensions of the legislative session provided for in Article 177 of the Portuguese Constitution.

b) Misdemeanours

Article 160(3) of the Constitution requires the authorization of the Assembly (and the suspension of the deputy's mandate) for the continuance of proceedings when 'criminal proceedings'

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[42] See the opinion of the Assembly of the Republic annexed to Doc. A3-112/91, of 30 April 1991 (report of the Committee on the Rules of Procedure of the European Parliament on a request for authorization for a Portuguese Member to make declarations).

are brought against any of its members. Although, with regard to straightforward disciplinary proceedings, there appears to be no doubt as to the absence of the need for that authorization[43], that is not the case with misdemeanours.

Despite the fact that both legal opinion and jurisprudence suggest that misdemeanours do not fall within the concept of 'criminal proceedings', the Committee on the Rules of Procedure and Parliamentary Mandates (with the favourable vote of the plenary session) has considered that it is not lawful, in these cases, for courts to try deputies without the authorization of the plenary session: 'if in order to be jurors, experts or witnesses, and in order to state their case as declarants or defendants, the Assembly's authorization is necessary (Rule 13(1) of the Rules for Deputies), then logically such authorization becomes necessary for the trial of deputies, regardless of the nature or type of proceedings under which they are accused'.

And the practice of the Assembly of the Republic (corroborating the opinions of the Committee on the Rules of Procedure and Parliamentary Mandates) has been not normally to authorize the trial of deputies in proceedings of that kind (e.g. infringements of the highway code), even if these involve the simple payment of fines, considering that it is not a case of 'a sufficiently serious matter the judicial evaluation of which cannot wait, without calling into question the Assembly's reputation, until the deputy's parliamentary activity comes to an end'. And even in the event that such authorization is granted, it has been understood that the suspension of the deputy's mandate is not necessary ('if the situations set out in Rule 13(1) of the Rules for Deputies do not involve the suspension of the mandate, then trial under infringement proceedings not involving liabilities of a criminal nature should not determine that suspension').

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[43] In this respect, see, in particular, opinion No. 101/87 of the Office of the Attorney-General of the Republic, Diário da República (Official Gazette), 2nd series, No. 99, 29.04.1988.

ANNEX

CONSTITUTION

Article 160

1. Deputies shall not be liable under civil, criminal or disciplinary law for votes and opinions expressed by them in the exercise of their duties.

2. No Deputy may be determined or arrested without the authorization of the Assembly, except for an offence punishable with imprisonment of more than three years and in flagrante delicto.

3. Once criminal proceedings have been brought against any Deputy, and the latter has been definitively accused, except in the case of an offence punishable with the penalty referred to in the preceding paragraph, the Assembly shall decide whether or not the Deputy should be suspended for the purposes of continuing the proceedings.

RULES FOR DEPUTIES

Rule 10 - Non-liability

Deputies are not liable under civil, criminal or disciplinary law for votes and opinions expressed by them in the exercise of their duties.

Rule 11 - Inviolability

1 - No Deputy may be detained or arrested without the authorization of the Assembly, except for an offence punishable with imprisonment of more than three years and in flagrante delicto.

2 - Once criminal proceedings have been brought against any Deputy and the latter has been definitively charged by an indictment or similar decision, except in the case of an offence punishable with imprisonment of more than three years, the Assembly shall decide whether or not the Deputy should be suspended, for the purposes of continuing the proceedings.

3 - The decision provided for in this article shall be taken by secret ballot and an absolute majority of Deputies present, after hearing the opinion of the Committee on the Rules of Procedure and Parliamentary Mandates.

RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC

Rule 3

The suspension of the mandate, the substitution of Deputies and the waiver of the mandate shall be carried out in accordance with the Rules for Deputies and other applicable legislation.

Rule 35 b)

It shall be the responsibility of the Committee on the Rules of Procedure and Parliamentary Mandates:

to pass judgment on the waiving of immunities, in accordance with the Rules for Deputies.

United Kingdom

I. The legal basis of parliamentary legal privilege

Parliamentary immunity is one of a number of specific rights enjoyed by each House collectively or by the Members of each House individually. Without them the Members could not discharge their functions satisfactorily, and they exceed those normally possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law. As well as the protection of parliamentary privilege, Lords also benefit from the privilege of peerage.

Most parliamentary immunities originated in the law and custom of the High Court of Parliament and some have been incorporated into statute law. For example, the privilege of freedom of speech in the House of Commons was confirmed by Act of Parliament i.e. the 'Bill of Rights' of 1689. Immunity from arrest or molestation, claimed by the House of Commons as early as the fifteenth century, was generally accepted in respect of civil matters, but less easily sustained against the Sovereign until the political changes of the seventeenth century gave Parliament predominant authority. Parliament made several attempts to balance the need for its Members to be free to attend to their duties without fear of arrest against the rights of members of the public in civil causes. Parts of two Acts which sought to strike this balance, the Privilege of Parliament Act 1603 and the Parliamentary Privilege Act 1737 are still on the Statute book.

II. Scope of parliamentary legal privilege

Members and Peers enjoy freedom from arrest, but any claim of privilege in criminal cases was abandoned 200 years ago, and the only element which now remains is a duty imposed on the head of the local police force to inform the Lord Chancellor or the Speaker of any arrest which is followed by detention. If a Peer or Member if sentenced to a term of imprisonment the court similarly informs the Lord Chancellor or the Speaker. A member can even be arrested in the precincts of the House in respect of a criminal offence.

There is immunity from civil arrest, but as arrest or detention for civil wrongs has fallen into almost complete disuse, it is of little consequence. A writ or subpoena may not be served on a Member in the precincts of the House without the leave of the House.

So, in practice, the only important immunity enjoyed by Peers or Members of Parliament as individuals is their freedom of speech and action in proceedings in parliament. The two Houses of Parliament, however, benefit from rights such as the right to regulate their internal affairs free from interference, the right to institute inquiries and summon witnesses, the right to punish those guilty of breaches of privilege and contempt, and the right to publish papers without fear of an action for defamation.

III. Acts covered by parliamentary legal privilege

Parliamentary legal privilege allows full freedom of speech and action in Parliament, which now mainly applies to the protection of Peers and Members from private actions concerning things said or done in proceedings in Parliament in connection with parliamentary business. the privilege is limited by a strict definition of 'proceedings in Parliament' confining them to 'everything said or done by a Member in the exercise of his functions as a Member in a Committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business'[44]. In this respect he enjoys absolute privilege, so that he cannot be sued for defamation or any related wrongs nor be compelled to give evidence about any proceedings in Parliament.

But he remains responsible like any other citizen for anything he does outside proceedings in Parliament, even where his actions relate to matters connected with his Parliamentary functions, such as his constituency duties. Thus letters written on behalf of constituents to Ministers, Government Departments or public bodies would be unlikely to be considered by the Courts of Law as enjoying parliamentary privilege, though they might well take the view that qualified privilege at common law applied to them. Words used outside the House by Members repeating words used as part of parliamentary proceedings would not be protected from actions for defamation, though the Courts would not allow evidence of proceedings within the House to be used to support a cause of action in respect of other words or actions of a Member outside Parliament. However, verbal or written communications between a Member and a Minister, or between one Member and another closely relating to proceedings of the House, or of a Committee of that House, would generally be considered to fall within the ambit of privilege.

Legal privilege also extends to witnesses, counsel, petitioners and other persons called upon to attend and participate in proceedings. This includes committee proceedings and the House of Lords sitting in its judicial capacity.

Privilege of freedom from arrest in civil cases, although in theory absolute, is now practically obsolete due to statutory abolition of imprisonment in civil proceedings.

Criminal activities have never been and are not now protected by privilege. In 1815, the Commons Committee of Privileges reported that the arrest of a Member had not violated parliamentary privilege, since he had been convicted of an indictable offence - even though he had been arrested within the Chamber itself[45]. Moreover, the current Standing Orders of the House of Lords except

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[44] Report of the Select Committee on the Official Secrets Act, HC 101 (1938-1939), p. 5

[45] CJ 1814-16, 186.

arrest or detention on any 'criminal charge'[46]. Both Houses have, however, retained the right to be informed of the detention of any Member.

Some question arises over the civil or criminal nature of arrest or detention for contempt of court or under emergency powers legislation. Contempts range from the flagrant abuses of court process to deliberate defiance of orders to pay judgment debts. In cases arising in the late 16th century and early 17th century Members were released by the courts on the order of either House. But since the early 19th century neither House has invoked this privilege in cases of open contempt of court and a Commons Select Committee in 1902 equated such contempts with indictable offences. Members have also been committed and fined under attachment orders of the courts, but the House must always be informed. Detention of a Member under emergency powers legislation has been treated as not involving a breach of privilege.

IV. Duration of parliamentary legal privilege

The privilege of freedom from arrest (which is, in any event, limited, see above) is enjoyed by Members of the House of Commons for forty days after every prorogation or dissolution. In practice, in view of the short interval between the prorogation of one session and the opening of a new session, Members continue to enjoy the protection of privilege without interruption. House of Lords Standing Order 78 is less clear, stating that privilege applies 'when Parliament is sitting, or within the usual times of privilege of Parliament'.

The privilege of freedom of speech is limited to 'proceedings in Parliament', that is, to the formal action taken by the House in its collective capacity. This is naturally extended to the whole deliberative process, including therefore the discussions prior to the final decision. It is therefore unlimited in period, as proceedings in Parliament are published by the House in various forms.

V. Procedure for withdrawal of parliamentary legal privilege

There is no provision in parliamentary law or custom or in statute law for any application to be made for withdrawal of the legal privilege of a Member of Parliament. The reason is that privilege is enjoyed by each House collectively as a constituent part of the High Court of Parliament and by Members of each House individually, to enable them to discharge their parliamentary functions.

Consequently, no court would order the detention of a Member in a civil action, in the knowledge that he would be protected by privilege. However, in cases of criminal offences, no such protection is available.

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[46] House of Lords Standing Orders Relating to Public Business, number 78, agreed 1 June 1954.

The House to which the Member belongs must in all cases be informed of the grounds on which he is charged with a criminal offence and detained, with the result that he is unable to discharge his parliamentary duties. Notice of the judgment must also be given to the House.

The exclusive jurisdiction of each House over its own proceedings, as a matter of internal regulation, is well established and uncontroversial. The position is less clear in relation to the nature and scope of the jurisdiction of each House where it has an external effect on private individuals and therefore comes into possible conflict with the role of the courts in the protection of the rights of individuals under the rule of law. The roles played by each House of Parliament and by the courts in this context are essentially independent and of equal authority. They have each gradually developed their own attitudes to privilege which are now to a large extent mutually compatible. The process has, however, involved more than one disagreement between the House of Commons and the House of Lords and between the courts and the Commons.

Criminal acts directed against the Parliament have been dealt with both by each House itself and by the ordinary courts, depending on the circumstances of the case. If, hover, substantive action is to lie in the courts, each House would normally assert its prior concerns and rights before court action began.

Offences against the Parliament may go wider than an infringement of the ancient and specific privilege of free speech, freedom from molestation, and related matters. Each House of Parliament may also proceed against those who by actions, writing or otherwise, offend against its authority or interfere with its work. Such offences are contempts (acts or omissions which impede the House in the performance of its functions or obstruct Members or officers in the discharge of their duty to the House). In this area, the finality and broad extent of the Parliament's judgment is most clearly seen. No court is likely to entertain any application to overturn or review the Parliament's decision in this area.

VI. The parliamentary practice

Essentially, Parliament has protected its integrity and standing not by the immunities conferred on its Members, but by punishing those who interfere with its proper functioning, whether by obstructing Parliament itself or by interfering with the parliamentary activities of its Members or attempting to corrupt them. The contempt powers of Parliament are however always exercised for the protection of the proper operation of the parliamentary processes themselves, and not in the interests of Members of Parliament as individuals.

Offenders may be committed to prison by the Houses of Parliament, expelled (if they are Members) or reprimanded on the floor of the House by the Speaker.

However, the contempt powers are nowadays exercised with considerable restraint.

The last imprisonment of a Member of the Commons (or of a non-Member) is a century old: the last expulsion took place in the 1950s although it may be that some Members have resigned rather than face the likelihood of expulsion. The last admonition of a stranger at the bar was nearly 40 years ago and of a Member in his place some 25 years ago. On the other hand, Members have more recently been suspended from the service of the House, in some cases also losing their salary for a period (for an offence committed during a sitting of the House), or have been declared guilty of a grave contempt for having lied to the House; and the House has agreed with a committee which found that the conduct of a Member amounted to a contempt. Since the Speaker of the House of Lords has no disciplinary powers and Lords act on their personal honour, it is not surprising that there are fewer occasions when such confrontations between an individual Peer and the House of Lords as a whole have taken place.

A resolution of the House of Commons in February 1978 stated that 'the House should exercise its penal jurisdiction in any event as sparingly as possible, and only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its Officers from such improper obstruction, or attempt at or threat of obstruction, as is causing, or is likely to cause, substantial interference with the performance of their respective functions'.

Two consequences have flowed from this decision of principle. First, complaints of privilege now reach the floor of the House of Commons only if the Speaker, after consideration, is minded to give them precedence over the orders of the day. Previously, a Member made his initial complaint in terms to the House; now he seeks precedence from the Speaker by letter. Secondly, the House has been very cautious in its privilege decisions and especially in the interpretation of the key phrase 'proceeding in Parliament'. Forty years ago the House of Commons was prepared to regard political party meetings in the Palace of Westminster to discuss parliamentary business as being attended by Members 'in their capacity as Members' and so close (by inference) to a 'proceeding in Parliament' that unfounded allegations in respect of behaviour at such gatherings could be a contempt of the House itself. There seems little doubt that, were such an issue to surface again, a different conclusion would be reached. Some thirty years ago, the Committee of Privileges of the House of Commons concluded (on the basis of precedent) that a letter written by a Member to a minister on the affairs of a constituent was a proceeding in Parliament: the House took the opposite view, which has since prevailed. In a cognate area, when Committees of Privileges have recommended punitive action against journalists who published information improperly obtained from the private deliberation of committees or refused to identify the sources from which the material was obtained, the House has not been willing to agree. Though the journalists' actions were, on precedents, contempts, the House would not take punitive action unless the leaker of the

information, the real offender as Members saw it, could be identified.

III. COMPARATIVE SUMMARY[47]

III.1 - Some general conclusions

The legal basis of parliamentary immunity is found in the majority of the constitutions of the Member States. In the UK, which has no written constitution, immunities have been decreed by law (Statutes, Acts).

In the UK, the Netherlands and Ireland immunity is recognized solely or predominantly in the form of non-liability; all the other Member States recognize both forms of immunity, albeit with variations.

Apart from the constitutional texts, most parliamentary Rules of Procedure contain specific references to the procedure for waiving immunity. The degree of detail in the provisions of these Rules of Procedure is, however, extremely variable.

A - Non-liability

Its scope normally covers protection against all kinds of public penalties, in other words, against all punitive measures emanating from the State or from State bodies.

Members of Parliament are exempt from civil and criminal liability in respect of acts covered by this aspect of immunity.

Most constitutional texts with dealing this area limit themselves to prohibiting members of parliament from being subject to legal proceedings or from being held liable. The Spanish Constitution, however, prefers to refer to the actual concept in question, and provides that 'deputies and senators shall enjoy inviolability'.

The French Constitution has a more precise provision, and establishes that members of parliament may not be pursued, held prisoner or convicted. The most explicit wording is found in the

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[47] It is our intention to set out in this point, in summarised, non-exhaustive form, the main solutions accepted, as well as one or more special features of the various systems. Close attention is paid, in particular, to the summary prepared by the Legal Service of the EP in 1990 and entitled "The legal status of Deputies, in Member States, in matters of non-accountability and inviolability" (EP 140.198/An) and the comparative study of Alexandro Pizzorusso, "Discord and misunderstandings between the criminal approach and the constitutional approach to parliamentary immunities". A set of comparative studies, based on a document drawn up in 1989 by the Directorate-General for Research of the European Parliament, supplements these brief general conclusions.

Portuguese Constitution, according to which deputies are expressly exempt from criminal, disciplinary and civil liability.

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

With regard to the acts covered by non-liability, these include, generally speaking, votes and opinions expressed. The Spanish Constitution contains no reference to votes cast, but these are unequivocally included by legal theory within the scope of this privilege.

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' (Belgium, France, Greece, Italy, Luxembourg, Portugal), which permits a somewhat broad interpretation, so that it makes the protection applicable to certain statements made outside Parliament.

Some constitutions, however, contain a specific reference to votes and opinions expressed inside the chamber, thereby restricting the margin of interpretation.

Denmark's Constitution, for example, provides that members of Parliament may not be subject to criminal action for statements made in the Folketing (Article 57(2)); the Netherlands' Constitution reserves that protection for statements made in the States General or at parliamentary committee meetings (Article 71); the Irish Constitution refers to statements made in both Chambers (Article 15(12) and (13)). In the same way, according to Article 46(1) of the Basic Law of Germany, non-liability covers votes cast and opinions expressed in the Bundestag or on one of its committees.

Despite the reasonably broad nature of constitutional texts, legal theory and parliamentary practice tend, in the majority of systems, to reject the extension of non-liability to opinions expressed, for example, in newspaper articles, public debates or election declarations. On the other hand, they are unanimous in recognizing 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.

Again as regards acts covered by non-liability, the most notable variation is, nevertheless, found in the Basic Law of Germany (Article 46(1)) and in the Greek Constitution (Article 61(1)), which both exclude defamatory remarks from the scope thereof.

Article 61 of the Greek Constitution also connects the right of refusal to testify as a witness, in certain cases, with the question of non-liability.

Unlike inviolability (or immunity in the strict sense), non-liability has an absolute quality, reflected in particular in the duration of its effects: the protection afforded is maintained even after the deputy's mandate has come to an end.

Another consequence of that absolute quality is the fact that parliaments do not have the competence in principle to submit for their authorization the possibility of waiving the non-liability of their members[48].

B - Inviolability

Most systems link this form of immunity to the prohibition on conducting or initiating criminal proceedings against members of Parliament, unless authorized by the latter.

In some Member States, the scope of inviolability also covers other interventions in the sphere of the liberty of a member of Parliament. So, for example, restrictions on personal freedom such as internment as a security measure (Denmark) are sometimes excluded; or all and any form of detention resulting from police measures, security measures, measures for the protection of property, disciplinary measures and procedures, inquiry proceedings and other investigations (Germany); or even personal or domiciliary examinations[49] (Italy).

Although only some constitutional texts expressly restrict inviolability to the criminal sphere (the German, Spanish, French, Italian and Portuguese Constitutions), it seems possible to conclude that most systems exclude civil actions from the sphere of inviolability.

The acts covered are, then, 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. For example, the Irish Constitution (Article 15(13)) excludes offences such as treason, felony and violations of public order, and the Portuguese Constitution excludes offences punishable by imprisonment of more than three years (Article 160(2) and (3)).

However, derogations from the principle of inviolability are usually constituted by infringements of a less serious nature.

Such is the case with simple misdemeanours, since it is felt that, in this case, given the relative non-seriousness of the punishment and the type of act punished, the function, independence and

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48 See, however, Article 57, Part Two, of the Danish Constitution, and the derogations mentioned in cases of defamation.

49 Cf. also Article 343 of the new Italian Penal Code.

reputation of the parliamentary institution and of its members would not be called in question. On the other hand, 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 his position. Irrespective of the practical solutions adopted[50], the relationship between misdemeanours and the principle of inviolability is not, however, free from any difficulty or dispute by virtue, in particular, of recent developments in the regulation of that type of infringement.

On the other hand, the laws are unanimous in considering that, in the case of flagrante delicto, inviolability must be waived, at least partially.

The concept of flagrante delicto is usually connected with the criminal notion of the established laws. However, the Basic Law of Germany contains a peculiar provision, whereby a member of parliament may be arrested when caught in flagrante delicto or during the day following the commission of the punishable act.

According to some constitutions, in order to exclude immunity it is not sufficient that flagrante delicto be verified, but it must also be a particularly serious offence: this is the case with Article 68(2) of the Italian Constitution, according to which it must also be an offence for which a warrant of arrest is obligatory; this is also the case of Article 160 of the Portuguese Constitution, whereby immunity against arrest or detention is maintained, even in the case of flagrante delicto, provided that the offence is not punishable by imprisonment of more than three years.

As regards the duration of the inviolability, it can be seen that, while in some Member States it has effect throughout the duration of the legislature (Denmark, Spain, Greece, Italy, Germany, Portugal), in others it refers only to the period of the sessions (Belgium, France, Luxembourg).

In any case, in a great many of the systems, any detention measures or legal proceedings initiated are suspended if the chamber concerned so requests (e.g. Article 26(4) of the French Constitution; Article 46(4) of the German Basic Law; Article 45(3) of the Belgian Constitution; Article 69(3) of the Luxembourg

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[50] In Germany, proceedings against deputies relating to minor infringements (including those relating to highway law) require the prior authorization of the Bundestag, even though this is usually granted automatically without delay or formality; in Portugal, parliamentary practice runs contrary to criminal doctrine in this respect, since it considers that it is unlawful for the courts, in these cases, to try deputies without the Assembly's authorization. In France, the wording of Article 26 of the Constitution permits the exclusion of misdemeanours from the scope of parliamentary inviolability.

Constitution; and Article 160(3) of the Portuguese Constitution, albeit with the exclusion of certain types of offence).

Some constitutions contain specific provisions permitting the maintenance of immunity during the period running between the dissolution of the chamber and the formation of a new chamber, in the case of re-elected members of Parliament. Such provisions are set out in Article 61 of the Italian Constitution; and in Article 62(1) of the Greek Constitution, for those accused of political crimes.

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.

The procedure for waiving parliamentary immunity[51] is normally regulated by parliamentary rules of procedure, which may or may not be accompanied by additional provisions ('annexes', 'general instructions').

The rules of the Bundestag on this subject are extremely detailed, and even contain, in addition to rules of procedure, actual principles for guidance on decisions to be taken. The provisions in force in the French National Assembly and in the Italian, Spanish and Luxembourg Chambers, for example, are also very comprehensive in their regulation of the procedure to be followed in matters of immunity.

In contrast, the texts of some Rules of Procedure are virtually neglectful in this area (e.g. the Belgian Senate, the Portuguese Assembly of the Republic) or very succinct (e.g. the Belgian Chamber of Deputies, the French Senate, the Danish Folketing).

The bodies competent to formulate and pass on to the Chambers requests relating to parliamentary immunity are not always the same (see tables attached).

The request, once received, is forwarded to the competent committee. This may be a committee specially formed to assess each specific case (e.g. in both chambers of the French Parliament, in the Luxembourg Chamber of Deputies), or a permanent committee, as is usually the case.

The hearing by the competent committee of the member concerned is expressly provided for in many of the parliamentary Rules of Procedure (by the Belgian Chamber of Deputies, the French National Assembly, the Greek Chamber of Deputies, both Chambers of the Italian Parliament and of the Spanish Parliament and the Luxembourg Chamber of Deputies).

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[51] This particular procedure is non-existent in Ireland, the Netherlands and the UK.

The decision of the chamber concerned is usually based on the recommendations of the competent committee. The Rules of Procedure of the Italian Senate contain a provision authorizing the submission of reports containing minority positions.

In the Parliaments of some Member States there are specific rules imposing certain limitations on the debate, particularly as regards the speakers who are allowed to take part in it (the French National Assembly, the Belgian Chamber of Deputies, the Spanish Senate). In the Bundestag, the member in question cannot participate in the substantive debate.

On the other hand, debates on questions of immunity take place 'behind closed doors' in some parliaments (the Luxembourg Chamber of Deputies, the Spanish Congress of Deputies and Senate).

The decisions of the parliamentary assemblies on requests concerning this subject are taken by secret vote in Spain, Greece, Italy, Luxembourg and Portugal[52].

One of the most important variations connected with the procedures for waiving parliamentary immunity stems from the fact that, in some systems, a period of time is established within which the chamber concerned must grant or refuse the authorization requested and that specific consequences arise from the non-observance of that time limit. Article 62(1) of the Greek Constitution, for example, states that, if the Chamber does not decide on the request for authorization to proceed within a period of three months, the request is considered rejected (this period is reduced to 45 days in the case of libellous offences committed in the exercise of duties, in accordance with Article 61(2) of the Constitution). The Rules of Procedure of the Spanish Cortes (Rule 14(2) of the Rules of Procedure of the Congress of Deputies and Rule 22(5) of the Rules of Procedure of the Senate) state that the request for authorization to proceed is considered rejected if the chamber to which the member belongs does not pass judgment on it within sixty days of receiving the request.

Although this subject does not relate directly to the parliamentary procedure for the waiving of immunity, emphasis should also placed on the existence, in some Member States, of special jurisdictional arrangements applicable in particular to members of Parliament. Some examples of this kind are: the privilege of the Spanish Supreme Court of competence to judge offences committed by members of the Cortes (Article 71(3) of the Spanish Constitution); the

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52 Spain: Rules 97(2) and (3) and 22(3) of the Rules of Procedure of the Senate; Rules 63 and 87(1)(1) of the Rules of Procedure of the Congress; Greece: Rules 83(8) and 73 of the Rules of Procedure of the Chamber; Italy: Rule 113(3) of the Rules of Procedure of the Senate and Rule 49(1) of the Rules of Procedure of the Chamber; Luxembourg: Rule 135 of the Rules of Procedure of the Chamber; Portugal: Rule 11(3) of the Rules for Deputies.

competence attributed under Article 119 of the Netherlands Constitution to the Supreme Court to judge offences committed by members of the States General; the attribution to the Greek Court of Appeal of competence to judge libellous offences committed by members of parliament while carrying out their duties (Article 61(2) of the Greek Constitution).

From an analysis of parliamentary practices we can see that there is an extreme diversity of criteria and interpretations used in making decisions on immunity, which are sometimes contradictory and not always properly worked out or systematized. In some cases, the absence of fixed criteria is even presented as a demonstration of the sovereignty of parliament, which is thus seen as entitled to look at each specific case on a discretionary basis, without being subject to rigid, predetermined principles.

It would be presumptuous, artificial and limiting to attempt to draw decisive conclusions and linear trends from the various parliamentary practices and statistical data presented. We would also stress that, on this subject, apart from the legal regulations and principles of jurisprudence and theory, other determining factors, especially of an institutional, political and cultural nature, ought also to be taken into consideration.

It is possible, however, on the basis of all the information collected, to make a few simple observations.

It can be seen, for example, that the number of requests for the waiving of parliamentary immunity (or for the suspension of detention or judicial proceedings) is substantially higher in some Member States (e.g. Italy, Greece) than in others (e.g. France, Denmark).

In some parliaments there is a clear predominance of rejected requests relating to cases of waiving of immunity, which could indicate a broader interpretation of this concept (e.g. the Portuguese Assembly of the Republic, the Greek Chamber of Deputies), while in others the reverse is found (e.g. the Bundestag); in many cases, however, it is impossible to make out a clear and continual preponderance of accepted or rejected requests from the data supplied.

On the other hand, from the information gathered, we can see that there is a tendency to restrict the criteria used until recently in this area in at least two parliamentary assemblies: the Italian Chamber of Deputies and the Spanish Congress of Deputies.

Among the guiding principles used by the various Parliaments as a basis for their decisions to refuse requests for the waiving of parliamentary immunity we find, in particular, the following:

- verification of the existence of so-called '<u>fumus persecutionis</u>', in other words, of definite signs that the purpose of the criminal proceedings is to unfairly persecute the member of Parliament and to threaten his freedom and independence in carrying out his mandate;

- the political nature of the facts considered criminal;

- the lack of seriousness of the facts or the obvious lack of grounds for the accusation.

In contrast, the waiving of immunity has been based in particular on the 'serious, sincere and loyal' nature of the requests submitted and on the particular gravity or nature of the criminal offences imputed (such as when they involve an element of ostensible public scandal or their urgent evaluation in court is necessary, owing to the fact that the reputation of the parliamentary institution itself or the basic rights of third parties are involved).

As mentioned earlier, however, parliamentary practice has revealed difficulties and inadequacies[53] in the definition and application of those principles, the interpretation of which requires care and flexibility.

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[53] On these difficulties and inadequacies, see, in particular, Pizzorusso, op.cit., pp. 20 and 21, and Gerard Soulier, 'L'inviolabilité parlementaire en droit français', pp. 54 ff. and 282 ff.

II The situation in the twelve Member States of the European Community

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
BELGIUM	Generally, the public prosecutor attached to the court of appeal whose jurisdiction concerns the presumed offence is responsible for drawing up a request for a waiver of immunity and forwarding it to the President of the chamber concerned. The private party affected is also authorized to draw up a request and forward it to the President of the Chamber of Deputies or the Senate.	The public prosecutor attached to the court of appeal whose jurisdiction concerns the presumed offence, or the private party affected.	Following the election of a new Chamber, the assembly appoints a special committee from among its Members.	The actions protected are set out in Articles 44 and 45 of the Constitution. Article 44 reads: 'No Member of either Chamber may be subjected to prosecution or judicial pursuit on the basis of opinions expressed or votes cast by him in the performance of his duties.'; Article 45 reads: 'No Member of either Chamber may, during the session period, be subjected to prosecution or arrest under the criminal law without the authorization of the Chamber concerned, except where he is found in the act of committing an offence. No Member of either Chamber may, during the session period, be subjected to civil imprisonment without similar authorization.'	The arrest or prosecution of a Member of either Chamber may be suspended during the session period and for its entire duration should the Chamber concerned so require (see Article 45(3) of the Constitution).	This procedure is governed by Rule 93 of the Rules of Procedure of the Chamber of Deputies: a seven-member committee is set up to examine requests. The committee may hear the Member concerned, who is entitled to ask for a hearing. He may arrange to be represented by a fellow Member. In the debate in plenary, the following only may speak: the rapporteur, the Member concerned or another Member representing him, one speaker for and one speaker against.	Where legal proceedings are initiated after the end of the parliamentary session or at the end of the parliamentary term (in the run-up to a general election), a fresh request has obviously to be drawn up for the beginning of the new session or parliamentary term. Even in cases where the judicial authority has not initiated proceedings by the time of the dissolution of the two Chambers, a fresh request must be taken out, as the previous request cannot be deemed to be addressed to the new Chamber. Although virtually no precedents exist on the matter, the above view may be justified by analogy with the practice by which bills are deemed to have lapsed automatically when the two Chambers are dissolved.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
DENMARK	The public prosecutor's office	The Ministry of Justice forwards requests to Parliament.	The Committee on the Rules of Procedure	Immunity gives protection against prosecution and imprisonment (unless a Member is found in the act of committing an offence), and also covers statements made in Parliament.	No. Parliament can only authorize or refuse the request for a waiver of immunity.	The request is forwarded by the President of Parliament to the Committee on the Rules of Procedure.	In practice, if a case has not been settled before the next general election, a fresh request must be submitted, even if Parliament granted its consent during the previous parliamentary term. The same applies to the continuation of a penalty already in force.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
GERMANY	The following are authorized to submit a request for a waiver of immunity: the public prosecutor's office, the courts, disciplinary tribunals or other professional bodies exercising surveillance within a profession under the law; in the case of criminal proceedings taken out by the victim in person without the assistance of the public prosecutor's office (Privatklage), the court concerned, prior to the opening of the main proceedings pursuant to Article 383 of the criminal code; the creditor in execution proceedings, where the court is unable to act without him submitting a request; and the Committee on Electoral Matters, Immunities and the Rules of Procedure.	The Ministry for Justice	The Committee on Electoral Scrutiny, Immunities and the Rules of Procedure	The non-liability of Members signifies that no proceedings may be taken out against a Member for opinions expressed or votes cast by him, provided the actions in question pertain solely to the performance of his parliamentary duties. However, proceedings may be taken out where a Member is accused of insults or defamation. Inviolability covers all actions subject to legal penalties and preserves the Member from all criminal proceedings, except where he is found in the act of committing an offence or is arrested on the day following the perpetration of an offence. No distinction is made between actions occurring inside and outside the Bundestag. The decision as to whether or not proceedings may be taken out against a Member in respect of actions committed by him is taken solely by reference to the rules concerning exercise of his mandate.	All criminal proceedings or measures involving the arrest of a Member or restrictions on his freedom must be suspended should the Bundestag so require (see Article 46 of the Basic Law).	The Committee on Electoral Scrutiny, Immunities and the Rules of Procedure lays down guidelines for considering requests for waiving the immunity of Members of the Bundestag, and employs those guidelines when drawing up its recommendations for a decision by the Bundestag in each individual case.	The Bundestag authorizes the waiver of a Member's immunity until the end of the legislative term in question (see Bundestag decision of 16 March 1973).

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
GREECE	The public prosecutor's office, acting on its own authority or on the request of the injured party	The public prosecutor's office, acting either through the Minister of Justice or directly	The Committee on Public Administration, Law and Order and Justice (see Rule 32(4) of the Rules of Procedure)	All actions subject to legal penalties, except where a Member is found in the act of committing an offence	Proceedings may be suspended where Parliament refuses to waive immunity and following expiry of the three-month deadline within which Parliament is required to reach a decision. The request may be made by the public prosecutor's office.	A request is forwarded to the President of Parliament; it is announced in plenary and transmitted to the competent parliamentary committee, which draws up a report, to be entered on the parliamentary agenda. The plenary reaches a decision. Should the request to waive immunity be refused, the dossier is returned to the public prosecutor's office and filed in the archives.	Article 62 of the Constitution states that a request is deemed to have lapsed where Parliament fails to reach a decision within three months (the period of parliamentary recess does not count towards this time-limit). In cases involving libel or slander (see Article 61 of the Constitution) the time-limit is 45 days. Requests for immunity to be waived in respect of 'political' offences are suspended for the period between the end of a legislative term and the proclamation of election of the Members of the succeeding Parliament.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
SPAIN	The division of the Supreme Court concerned with criminal offences; requests are forwarded by the President of the Supreme Court.	The President of the Supreme Court	The relevant committees are: for the Congress of Deputies, the Committee on the Statute for Members, consisting of one member per parliamentary group; for the Senate, the Committee on Immunities, consisting of 25 members chosen in proportion to the strength of the various parliamentary groups.	Members of the Congress and Senators are immune from prosecution for opinions expressed or votes cast by them in the performance of their duties (see Article 71 of the Constitution). They are also immune from criminal prosecution for the period of their mandate, except where a parliamentarian is found in the act of committing an offence. Immunity does not apply to civil proceedings.	Interpretation of the respective Rules of Procedure of the Congress of Deputies and the Senate suggests that judicial proceedings may be suspended before action has been initiated on a request for a waiver of immunity, but not after immunity has been waived.	The President of the Chamber of Deputies must forward a request for a waiver of immunity to the Committee on the Statute for Members, within five days and subject to the prior agreement of the Bureau. In the case of the Senate, the request is forwarded to the competent committee. The committee has 30 days to deliver an opinion after hearing the parliamentarian concerned. The debate on the opinion is included on the agenda for the next ordinary session. Both the debate and the vote are conducted in camera. The President communicates the decision of the plenary to the President of the Supreme Court. The request is deemed to have lapsed where no decision has been reached in plenary within 60 calendar days (inside a session period).	Interpretation of Article 71(2) of the Constitution suggests that a request for a waiver of immunity should not be deemed to have lapsed at the end of a legislative term. In both houses, a request is deemed to have lapsed where no decision has been reached in plenary within 60 calendar days (inside a session period) from the day following receipt of the request.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority respon-sible for forwarding a request for a waiver of parlia-mentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
FRANCE	The judge concerned is obliged as part of his duties to raise the question of immunity, since it falls within the sphere of law and order; otherwise, it may be raised at any moment by the parliamentarian himself or any other party.	The Minister for Justice	A request for a waiver of immunity is forwarded by the Minister for Justice to the Bureau of the relevant Chamber. It is then printed, distributed and forwarded for examination to a committee (in the case of the Senate, a committee of 30 members specially set up for the purpose under Rule 105 of its Rules of Procedure; in the case of the National Assembly, a committee of 15 members under its Rule 80).	Parliamentary immunity implies two forms of protection: non-liability, covering actions related to the parliamentarian's performance of his duties, and inviolability, covering actions not related to those duties. Under Article 26(1) of the Constitution, no parliamentarian may be subjected to prosecution, search, arrest, detention or trial in respect of opinions expressed or votes cast in the course of his parliamentary duties. Non-liability under this provision is absolute: it protects parliamentarians in both the civil and the criminal sphere, and its withdrawal may not be requested. Furthermore, Article 26(2) of the Constitution states that no parliamentarian may, during the session period, be subjected to prosecution or arrest 'under the criminal law' without the authorization of the relevant	On the request of one or more parliamentarians, the Chamber concerned may at any moment call for the lifting of the arrest of a parliamentarian or the suspension of proceedings aimed at his arrest. This facility permits the Chamber to extend immunity to cover proceedings initiated prior to commencement of a parliamentarian's mandate or detention measures ordered after he has been found in the act of committing an offence (see Article 26(4) of the Constitution). Parliament alone may grant or refuse	The appointment of a rapporteur for the ad hoc committee, the examination of its conclusions and the inclusion of the matter on the agenda all follow the usual rules. The National Assembly or the Senate debates the conclusions in plenary; the debate, in principle, concerns not the facts of the case but solely whether the request is 'serious, sincere and in good faith': these are cumulative conditions established by precedent. The Chamber concerned may deliver its opinion by public vote, adopting a resolution	With regard to the effects of inviolability on the validity over time of a decision to suspend prosecution or detention measures, the absence of any provision in the relevant texts has been an impediment to interpretation. It has, however, been consistently ruled that a refusal to waive immunity is valid for the entire term of office of the parliamentarian concerned, in view of the continuous nature of the exercise of the parliamentary mandate (even where its specific form may vary) and, especially, the special characteristics of immunity in the case of Members of the European Parliament.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority respon-sible for forwarding a request for a waiver of parlia-mentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
				Chamber, unless he has been found in the act of committing an offence. This inviolability does not apply to civil offences; in the case of the criminal law, it covers actions classified as 'crimes' or 'offences', but not those classified as 'contraventions'. Article 26(3) states that no parliamentarian may be arrested outside the session period without the authorization of his Bureau, except where he has been found in the act of committing an offence and in cases of authorized criminal proceedings or a final sentence.	authorization for immunity to be waived.	embodying, as appropriate, its endorsement or rejection of the request for a waiver of immunity or, additionally, calling for prosecution or detention measures to be suspended or rejecting the request for their suspension.	As the European Parliament does not recognize any notion of 'session and non-session periods', its Members are protected by immunity for their entire term of office.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
IRELAND	The Constitution contains no provision for waiving parliamentary immunity.	Does not apply	Does not apply	Article 15(10) (1937) of the Irish Constitution states: 'Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.' Article 15(12) states: 'All official reports and publications of the Oireachtas (Parliament) or of either House thereof and utterances made in either House wherever published shall be privileged.' Article 15(13) states: 'The Members of each House of the Oireachtas shall, except in cases of treason as defined in the Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.'	No provision exists for suspension of legal proceedings against a person on the grounds that he is a Member of one of the Houses, but his arrest is contingent on the constitutional provision cited above.	Does not apply	Does not apply

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
ITALY	The judge or public prosecutor concerned	The Minister for Justice	In the case of the Chamber of Deputies, the committee responsible for authorizing the initiation of proceedings; in the case of the Senate, the Committee on Electoral Scrutiny and Parliamentary Immunities.	Parliamentarians may not be subjected to prosecution for opinions expressed or votes cast by them in the performance of their duties. No parliamentarian may be subjected to criminal proceedings, arrest or other deprivation of personal freedom, or search of the person or property, without the authorization of the Chamber of which he is a Member, except if he is found in the act of committing an offence where an arrest warrant is required. Authorization is similarly required for a parliamentarian to be placed under arrest or kept in detention in execution of a judicial decision, even where this is of an irrevocable nature. In accordance with established practice, authorization is generally refused in cases of insult or defamation.	No	The procedure followed by the Chamber of Deputies is governed by Rule 18 of its Rules of Procedure. Requests are addressed to the Chamber, printed and forwarded to the relevant committee, which must examine them within a time-limit of 30 days (subject to extension) on the basis of an introductory report by one of its members, further information, written proofs and other documents which the Member concerned is entitled to supply and the procedural documents forwarded by the judge. The committee must draw up final proposals granting or refusing authorization for legal proceedings; these are submitted in plenary together with a written report. The final decision is taken in plenary.	A decision of the Chamber of Deputies concerning authorization for legal proceedings may not be modified for the remainder of the legislative term. It must be renewed if the Member concerned is re-elected. No time-limit exists for consideration by the Chamber of requests forwarded to it.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
LUXEMBOURG	The Minister for Justice or the public prosecutor's office	The Prime Minister, the injured party or the Member himself	A special committee is set up to examine each request.	Immunity covers opinions expressed over the period of a Member's mandate. No Member found guilty of a crime, offence or contravention may be subjected to arrest or prosecution during the session period without the authorization of the Chamber of Deputies, except where he has been found in the act of committing an offence.	Should the Chamber so require, detention or prosecution measures in respect of a Member may be suspended for the entire session period.	The committee informs the Member concerned and hears his case. Its report to the Chamber takes the form of a motion for a resolution. The report is examined in camera and voted on by secret ballot.	In a recent case, the court ruled that a request for a waiver of immunity did not lapse by reason of the end of the legislative term. Requests are similarly not deemed to have lapsed after a certain period, or for any other reason.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
NETHERLANDS	No provision exists for waiving parliamentary immunity. In 1986, proposals to introduce such a provision in cases of breach of secrecy or incitement to crime were rejected.	No provision exists for waiving parliamentary immunity. In 1986, proposals to introduce such a provision in cases of breach of secrecy or incitement to crime were rejected.	No provision exists for waiving parliamentary immunity. In 1986, proposals to introduce such a provision in cases of breach of secrecy or incitement to crime were rejected.	a) Protection against ill-considered legal actions: Members may only be prosecuted for offences by the Supreme Court. No Member has been prosecuted for an offence to date. b) Protection of Members' freedom of expression in Parliament: Members may not be prosecuted for opinions expressed at meetings of parliamentary bodies or views published in parliamentary documents.	No provision exists for waiving parliamentary immunity. In 1986, proposals to introduce such a provision in cases of breach of secrecy or incitement to crime were rejected.	No provision exists for waiving parliamentary immunity. In 1986, proposals to introduce such a provision in cases of breach of secrecy or incitement to crime were rejected.	No provision exists for waiving parliamentary immunity. In 1986, proposals to introduce such a provision in cases of breach of secrecy or incitement to crime were rejected.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended, and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the parliamentary term has expired or for any other reason?
PORTUGAL	The courts	The judge responsible for the legal proceedings taken out against the Member	The Committee on the Rules of Procedure and Parliamentary Mandates	Members of the Assembly of the Republic are immune from civil, criminal or disciplinary liability for votes cast or opinions expressed by them in the performance of their duties. No Member may be arrested or imprisoned without the authorization of the Assembly, except in cases of offences punishable by a prison sentence of more than three years and where the Member has been found in the act of committing the offence.	Criminal proceedings may only be suspended where the offence carries a prison sentence of three years or less and the Member's immunity has not been waived by the Assembly. Where the offence carries a prison sentence exceeding three years, the Assembly is not empowered to intervene, not even to waive the Member's immunity in the interests of the legal proceedings. No Member may be arrested or imprisoned without the authorization of the Assembly, except in cases of offences punishable by a prison sentence of more than three years and where the Member has been found in the act of committing the offence.	The judge responsible draws up the request for a waiver of immunity; the Committee on the Rules of Procedure and Parliamentary Mandates draws up an opinion on the request, and the Assembly decides by a secret vote requiring an absolute majority of the Members present.	Once a Member's immunity has been waived to enable legal proceedings to take place, the waiver of immunity may not lapse.

	What authority is responsible for making requests for a waiver of parliamentary immunity?	What is the authority responsible for forwarding a waiver of parliamentary immunity?	Does the Parliament have a committee which specializes in this matter?	What acts by Members are covered by immunity (acts relating to civil and criminal matters?)	Can proceedings be suspended and at whose request?	What is the parliamentary procedure for waiving immunity?	Is there any provision whereby a request for a waiver of immunity lapses after a certain time or because the Parliament's term of office has expired for any other reason?
UNITED KINGDOM	None	None	No committee is responsible, but the Committee on Privileges in each House delivers an opinion on any complaint of infringement of privilege or contempt addressed to it. The House alone may impose penalties or take decisions in this field.	Speeches in the House or in committee, the tabling of a Bill, an amendment, a motion, a draft report or a question.	Where criminal charges have been made, Members are treated in the same way as other members of the public.	None	Not applicable

PART TWO

PARLIAMENTARY IMMUNITY IN THE EUROPEAN PARLIAMENT

I - The legal basis of parliamentary immunity

Article 28 of the Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities (the merger treaty) states that the European Communities 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[54].

Articles 9 and 10 of this protocol concerned (the Protocol on the Privileges and Immunities of the European Communities - PPI) reiterate the provisions concerning non-liability and immunities in respect of Members of the European Parliament previously set out in the protocol to the Treaty of 18 April 1951 establishing the ECSC and the protocols to the respective Treaties of 25 March 1957 establishing the EEC and the EAEA, as follows:

'Article 9

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 10

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.

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[54] The second paragraph of this article repeals Article 76 of the ECSC Treaty, Article 218 of the EEC Treaty and Article 191 of the EAEA (Euratom) Treaty, the respective substance of which was identical to that of the first paragraph of the same article.

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 1965 the single Assembly of the European Communities which had meanwhile been set up[55] still consisted of delegates appointed by the national parliaments in accordance with specific national processes determined by the individual Member States. This situation explains the fact that subparagraph (a) of the first paragraph of Article 10 of the PPI invokes the national provisions governing parliamentary immunity.

The Act of 20 September 1976 altered the mode of composition of the European Parliament, stipulating that its Members must be elected by direct universal suffrage. Nonetheless, Article 4(2) of this Act states:

'Representatives shall enjoy the privileges and immunities applicable to Members of the European Parliament by virtue of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities.'

Under this provision, Articles 9 and 10 of the PPI, as transcribed above, have continued to apply to Members of the European Parliament even after the introduction of direct elections.

As the national rules governing parliamentary immunity in the Member States are not identical, the application of Article 10 of the PPI has led to substantial nationality-based disparities in the treatment of Members of the European Parliament.

In a resolution of 15 September 1983[56], 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 Community-wide statute for its Members.

On 14 November 1983 the Enlarged Bureau of Parliament submitted an initial proposal to the Commission concerning revision of the PPI. The Commission amended this draft and forwarded it to the Council, pursuant to the first paragraph of Article 236 of the EEC Treaty (Doc. 1-1442/84; COM(84) 0666 final). The Council forwarded this text to Parliament for consultation, pursuant to the second paragraph of the same treaty article (C2-0031/85). Following this

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[55] See Article 1 of the Convention on certain institutions common to the European Communities signed in Rome on 25 March 1957.

[56] OJ No. C 277, 17.10.1983, p. 135

consultation, Parliament proposed a number of amendments to the Commission draft, in a resolution of 10 March 1987[57].

This resolution was preceded by a report by the Committee on Legal Affairs and Citizens' Rights (the Donnez report, A2-0121/86) setting out in detail the reasons justifying revision of the PPI.

Despite successive calls for action on the matter by Parliament[58], the Council has so far failed to take a decision on amending Articles 9 and 10 of the PPI[59]. One of the protocols annexed to the Treaty on European Union signed in Maastricht on 7 February 1992 amends the protocol by extending it to the European Central Bank and the European Monetary Institute, while making no change to the provisions concerning parliamentary immunity.

The procedure for waiving a Member's parliamentary immunity is governed by Rule
5 of Parliament's Rules of Procedure; it will be discussed in section IV.

II - The duration of parliamentary immunity

The exemption of Members of the European Parliament from liability for the opinions expressed and votes cast by them in the performance of their duties (as specified in Article 9 of the PPI) protects them for the entire duration of their term of office and, indeed, beyond, given that the privilege is not subject to a time limit.

The immunity provided for in Article 10 of the PPI is effective 'during the sessions of the European Parliament'.

The precise nature of the concept covered by this phrase 'during the sessions' has been the object of interpretation by the European Court of Justice in two decisions of, respectively, 1964[60] and 1986[61]. From these two decisions and from Rule 9(1) of

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57 OJ No. C 99, 13.4.1987, p. 43

58 In addition to the texts already cited, see the resolution on the system of immunity for Members of the European Parliament of 10 May 1991 (OJ No. C 158, 17.6.1991, p. 258) and the decision of the same date (ibid., p. 27).

59 Article 239 of the EEC Treaty (according to which the protocols annexed to the Treaty are an integral part thereof) implies that revision of the PPI is currently governed by the conditions set out in Article 236 concerning amendment of the Treaty itself.

60 Decision of 12 May 1964 (Wagner v. Fohrmann and Krier), Case 101/63, ECJ Reports 1964, pp. 397 ff.

61 Decision of 10 July 1986 (Wybot v. Faure), Case 149/85, ECJ Reports 1986, pp. 2391 ff.

Parliament's Rules of Procedure it may be concluded that Parliament holds an annual session lasting twelve months, during which its Members enjoy the immunity defined in the PPI, even in the periods between part-sessions.

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.

In their reports, the successive competent committees of Parliament (initially the Committee on Legal Affairs and Citizens' Rights and, as from 1987, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities) have repeatedly taken the view that immunity is effective from the moment when a Member is declared to have been elected[62] up to the moment of conclusion of his term of office.

According to Article 3 of the Act of 1976, a Member's term of office expires at the end of the five-year period for which representatives are elected to the European Parliament. Rule 7(2) of Parliament's Rules of Procedure stipulates that Members who fail to gain re-election continue to sit until the opening of the first sitting of Parliament following the elections. If these two provisions are combined, it may be concluded that a Member is protected by parliamentary immunity during the whole five-year period of his term of office, even where he fails to gain re-

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[62] Article 3 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage states that the term of office of each representative begins and ends at the same time as the five-year period for which he is elected (paragraph 3), and that that period begins 'at the opening of the first session following each election' (paragraph 2). If one combines this provision with the reference to the same Act in Rule 7(1) of Parliament's Rules of Procedure, it may be concluded that, with respect to elected representatives who were not Members of the previous Parliament, parliamentary immunity is effective not from the date on which the Member is declared elected but, rather, from the date of opening of the first session following his election (in this connection, see Manuel Cavero Gómez, 'La inmunidad de los diputados en el Parlamento Europeo (Immunity of the Members of the European Parliament)', Revista de las Cortes Generales (review of the Spanish Parliament), Separata (i.e. article published separately) No. 20, second four-month period of 1990, pp. 16 and 17).

election, up to the day preceding that of the opening of the first sitting following the election concerned[63].

Exceptions obviously apply where a Member's term of office ends early for reasons of decease, resignation or incompatibility of functions: 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 a note attached to Rule 7 of its Rules of Procedure.

It should be added that Parliament, in view of the silence of the PPI on the matter and the absence of any other rule thereon, has specified the justification for its view that immunity under Article 10 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 justification is based on the premise that the primary purpose of immunity is to protect the normal functioning of the parliamentary institution, which principle might otherwise be jeopardized by actions occurring both before and after the commencement of a Member's term of office.

III - The scope and purpose of parliamentary immunity

From Article 28 of the merger treaty of 8 April 1965 it may be concluded that the privileges and immunities set out in the PPI were established with the purpose of enabling the Communities to carry out their mission. Article 4 of the EEC Treaty, Articles 3, 6 and 7 of the ECSC Treaty and Article 3 of the Euratom Treaty make it clear that the Communities are bound to act through their respective institutions, including the European Parliament. It has, accordingly, been the traditional view that the immunity defined in Articles 9 and 10 of the PPI is intended to ensure the protection of Parliament as a Community institution, rather than the protection of its Members considered as individuals. The same interpretation underlies the principles set out by the Court of Justice in its decisions cited above, in particular where it has ruled that Article 10 of the PPI is to be considered from the vantage point of equal treatment for all Members of the European Parliament, irrespective of nationality[64].

This institutional purpose of the concept of immunity is also a basic criterion for the interpretation of Article 10 of the PPI.

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[63] Article 10(4) of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage states: 'The powers of the outgoing European Parliament shall cease upon the opening of the first sitting of the new European Parliament.'

[64] See the decision of 10 July 1986, Case No. 149/85, Wybot v. Faure, ECJ Reports 1986, p. 2407(2).

a) Article 9 of the PPI and the concept of non-liability[65]

Under Article 9 of the PPI, Members of the European Parliament 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 governed only by the rules governing procedure and the conventions of parliamentary etiquette, whose determination and application are the sole responsibility of Parliament itself and subject to no intervention by outside bodies.

Despite the existence of analogous provisions in the twelve Member States, the scope of this privilege is not identical to that prevailing under the various domestic systems. Parliament has endeavoured to define the precise scope of the provision concerned, proposing that the existing text of Article 9 of the PPI be replaced by the following wording[66]:

'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.'

The formula employed in Article 9 of the PPI referring to opinions expressed or votes cast by Members 'in the performance of their duties' corresponds to the constitutional traditions of France, Belgium and Italy[67].

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65 The term 'non-responsibility' does not occur in the PPI. It is adopted here for practical reasons, with a view to simplifying the discussion; as seen in the first part of this study, the terminology used by the various national legal systems to designate this aspect of immunity is not uniform.

66 Resolution on the draft protocol amending the Protocol on the Privileges and Immunities of the European Communities, OJ No. C 99, 13 April 1987, p. 43. See also the Donnez report (A2-0121/86), Part B, p. 20.

67 Cf. Article 26 of the French Constitution, Article 44 of the Belgian Constitution and Article 68 of the Italian Constitution.

According to legal opinion[68] and following the interpretation of the committee of Parliament concerned, this formula should be read as referring to 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 9 of the PPI is not deemed to cover opinions expressed by Members at party conferences, during election campaigns or in books or articles published by them[69].

Non-liability is considered to apply only to 'opinions' and 'votes' and not to any acts of physical violence, even where resorted to with the aim of giving expression to a particular opinion[70].

In contrast to the provisions of the first paragraph of Article 46 of the Basic Law of the Federal Republic of Germany (FRG) and the second paragraph of Article 61 of the Greek Constitution, the PPI does not exclude actions committed with defamatory intent from the scope of non-liability. It follows that in such cases Members still benefit from the protection conferred on them by Article 9 of the PPI[71].

With regard to the non-liability of the representatives of the FRG in the European Parliament, the second paragraph of Article 5, section 1 of the Federal Law of 6 April 1979 concerning Members of the European Parliament refers to section 1 of Article 46 of the Basic Law of the FRG, which excludes defamatory statements.

Non-liability as defined in Article 9 of the PPI is of an absolute nature; no exclusion is permitted on the part of any entity, not even Parliament itself. It is thus not subject to the procedure laid down in Rule 5 of the Rules of Procedure.

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68 Jeuniaux, 'Le statut personnel des membres du Parlement Européen' ('The personal status of Members of the European Parliament'), Toulouse 1987, p. 179; Senén Hernández, 'Inviolabilidad e inmunidad en el Parlamento Europeo', Revista de las Cortes 1986, p. 322; Harms, 'Die Rechtstellung des Abgeordneten in der Beratenden Versammlung des Europarats und im Europäischen Parlament' ('The legal status of members of the Parliamentary Assembly of the Council of Europe and Members of the European Parliament'), Hamburg 1968, p. 90 (quotations included in the study by the Legal Service of Parliament, PE 140.197, 23 April 1990).

69 Cf. Jeuniaux, op. cit., p. 180, and Senén Hernández, op. cit., p. 322.

70 Cf. Harms, op. cit., p. 91, and Senén Hernández, op. cit., p. 321.

71 Cf. Jeuniaux, op. cit., p. 179, and Moretti, 'Le immunità dei parlamentari europei: un istituto da rivedere' ('The immunities of Members of the European Parliament: the need for institutional review'), Il Foro Italiano, 1985, pp. 342 ff.

In its opinion of March 1987 on the draft revision of the PPI, Parliament proposed that a new Article 9a be inserted entitling Members to refuse to testify in court where their testimony related to their activities as Members of the European Parliament.

The effect of this proposal would be to give official sanction to a privilege existing in various Member States[72] which is not mentioned in the existing protocol.

b) Article 10 of the PPI (immunity in the strict sense)

Immunity in the strict sense refers to actions by Members of the European Parliament not covered by Article 9 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 realized within or outside Parliament.

Article 10 of the PPI differentiates two types of situation arising 'during the sessions of the European Parliament', according to whether the Member concerned is physically present *in the territory of his own Member State* or *in the territory of any other Member State*.

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[72] Parliament has in the meantime received various requests for authorization from national authorities to the effect that its Members should be enabled, under the legislation concerned, to testify or make statements. A recent case involving a request for authorization to enable a Portuguese Member to make statements in Portugal in the context of an investigation procedure is illustrative of the disturbances created by the present state of affairs, under which the matter is referred by Article 10(a) of the PPI to the national legal authorities. The Committee on the Rules of Procedure, the Verification of Credentials and Immunities of the European Parliament was obliged in this case to request the Assembly of the Portuguese Republic to provide an interpretation of the national legislation applying to the matter, finally deciding, in view of the opinion of the Portuguese assembly and of its own criteria, that there was no case for either granting or refusing the authorization requested. It was concluded that the authorization to make statements provided for by the Portuguese legislation was not an immunity but, rather, a right or privilege of parliamentarians, while the powers of the European Parliament were deemed to be limited to parliamentary immunities as such, in accordance with Article 10 of the PPI (A3-0112/91 - decision of 14 March 1991; OJ No. C 158, 17.6.1991).

In the first case, subparagraph (a) of the first paragraph of the article refers the matter to the national law of the Member States, stating that Members of the European Parliament are entitled to the immunities accorded to members of their respective national parliament.

As pointed out above, this formula creates actual inequality of treatment as between Members, as a result of the variations between the different national provisions on the matter.

This situation also entails adverse consequences for Parliament's own work, since it obliges Parliament, in each individual case of a request for a waiver of immunity, to examine the relevant national legislation concerning immunity and the related procedures[73]. This may lead to delays in decision-making, errors in interpretation and even misapplication of the rules concerned.

Despite the limitations defined in subparagraph (a) of the first paragraph of Article 10, Parliament has created its own body of legal precedent with regard to the procedure and criteria for waiving immunity.

The principles concerned - to be examined in sections IV and V below - are intended to ground Parliament's decision in solid and uniform legal bases while not accentuating nationality-based disparities in the treatment of individual Members. The reports of the competent committee of Parliament thus consistently refer to the 'autonomous character' of immunity in the European Parliament vis-à-vis national parliamentary immunity.

Where a Member is present on the territory of a Member State other than that of which he is a national, he is exempt from 'any form of ... detention or legal proceedings'.

Subparagraph (b) of the first paragraph of Article 10 - in contrast to subparagraph (a) - provides for a genuine concept of 'Community-level immunity', since it does not define the privilege in question in terms of reference to national law. As has been repeatedly affirmed in the reports of the competent committee of Parliament, immunity covers Members throughout their term of office; this applies equally to the instigation of legal proceedings, investigatory procedures, acts in execution of sentences already passed and appeal procedures.

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[73] The factors which have to be established include the authorities responsible for drawing up the request, the procedures concerning the investigatory and preparatory actions preceding such requests, the procedures governing appeal against those procedures, etc. With a view to alleviating these problems, Parliament, in its resolution of 10 May 1991 on the system of immunity for Members of the European Parliament, called for the provision of memoranda containing such information.

The reference in subparagraph (b) of the first paragraph of Article 10 to *'legal proceedings'*, however, gives rise to some doubt whether the scope of the immunity conferred thereby is confined to the area of criminal law or, rather, also extends to civil law, as in the case of the concept of non-liability set out in Article 9.

Subparagraph (a) of the first paragraph of Article 10 has on several occasions been interpreted in a broad sense, as referring to legal proceedings of any type[74]; however, there remain solid arguments favouring a restricted interpretation confining its scope to criminal proceedings.

None of the six founder Member States of the EC which have examined the text of Articles 9 and 10 of the PPI in fact grants immunity to its national parliamentarians in the case of civil proceedings. It is difficult to give credence to the notion that the representatives of those six Member States intended to grant Members of the European Parliament privileges of a more extensive nature than those accorded to their own national parliamentarians.

The restrictive interpretation limiting the provisions of subparagraph (b) of the first paragraph of Article 10 of the PPI to criminal proceedings has also found its proponents in Parliament.

In March 1987, Parliament went so far as to propose an amendment to the Commission proposal revising the PPI, with a view to clarifying the provision in question by expressly restricting the immunity of Members to criminal proceedings and measures involving deprivation or limitation of individual freedom[75].

The recently introduced paragraphs 3 and 3a of Rule 5 of Parliament's Rules of Procedure[76] reinforce this interpretation,

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[74] Cf. Senén Hernández, op. cit., p. 329; and certain speeches made in 1985 to the British House of Lords by the Foreign Office and the Lord Chancellor's Department (House of Lords, Session 1985-1986, 8th Report, Select Committee on the European Communities - Privileges and Immunities of Members of the European Parliament: Evidence, pp. 4 and 12, section 49) (quoted in the study by the Legal Service of Parliament, PE 140.197, 23 April 1990).

[75] Cf. the Donnez report (A2-0121/86), pp. 21 and 31. The amendment read: 'Members of Parliament shall enjoy in the territory of the Member States immunity from prosecution, arrest or any other measure depriving them of or limiting their personal freedom.'; in this connection, see also the replies to the House of Lords by a number of Members of the European Parliament (House of Lords, op. cit., p. 22, section 93 and p. 23, section 94).

[76] Cf. section IV below.

referring as they do expressly to 'prosecution proceedings' and to the 'prosecution' of the Member concerned.

The second paragraph of Article 10 of the PPI additionally confers immunity on Members ***while they are travelling to and from the place of meeting of the European Parliament.*** This too should be considered a 'Community-level immunity', as being independent of the protection accorded by the national legislation; it is a specific expression of the general provision set out in the first paragraph of Article 8 of the same text[77].

The initial objective of this provision was the safeguarding of the normal functioning of the assembly 'during the sessions of the European Parliament'. In view of the interpretation established over the years concerning the duration of Parliament's sessions, to the effect that parliamentary immunity applies throughout a Member's term of office, the protection accorded by the second paragraph of Article 10 may be considered as still of some practical interest to Members who are travelling, within the territory of their own Member State, to or from the place of meeting of Parliament, in cases where the national legislation does not guarantee immunity (or does so in a more limited sense) or fails to apply it effectively[78].

In its opinion of March 1987 on the proposed revision of the PPI - as in the Commission's original draft - Parliament removed the reference to this specific type of immunity; it was understood that it would be covered by the general rules set out in the proposed amendments to Articles 8 and 10.

The last paragraph of Article 10 contains a clear 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***'.

This provision too has given rise to problems of interpretation: the question has been raised whether in such circumstances Parliament is entitled to request the suspension of legal proceedings already initiated under the national law of a Member State.

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[77] The text reads: 'No administrative or other restriction shall be imposed on the free movement of members of the European Parliament travelling to or from the place of meeting of the European Parliament.'

[78] In this connection, cf. Manuel Cavero Gómez, 'La inmunidad de los Diputados en el Parlamento Europeo', Revista de las Cortes Generales, 20, 1990, pp. 24 and 25. The same author adds that this guarantee would also apply in periods where Parliament had decided to suspend a session (something which has never happened to date) - in which case subparagraphs (a) and (b) of Article 10 would no longer apply.

The former text of Rule 5(3) of Parliament's Rules of Procedure gave direct recognition to this right, stating as it did that 'should a Member be arrested or prosecuted after having been found in the act of committing an offence, any other Member may request that the proceedings be suspended or that he be released'. However, the Rules of Procedure do not constitute an expression of the will of the Member States.

The six Member States which, on 18 April 1951, signed the ECSC protocol on immunities - i.e. the precursor text to the PPI - provide in their national legislation, with the sole exception of the Netherlands, for the limitation of the immunity of a parliamentarian found in the act of committing an offence, while also according to their national parliaments the right to request the suspension of any legal proceedings initiated. However, the six founder Member States granted no such right of suspension to the European Parliament when drawing up Article 10 of the PPI.

This fact, together with the existence in the third paragraph of Article 10 of an express provision concerning cases where a Member is found in the act of committing an offence (which implies that such cases are not deemed to be implicitly covered in subparagraphs (a) and (b) of the first paragraph), reinforces the notion that the signatories to the PPI intended to regulate the matter at Community level.

The fact that the PPI does not endow Parliament with the right to request suspension of proceedings has been explained by the interpretative view that the interruption of immunity has only a temporary effect, applying solely at the moment of arrest so as to permit the Member States to put an end to a situation in which public safety or law and order are endangered: once the threat concerned has been removed, the general provisions concerning immunity become fully applicable again[79].

Parliament has on two occasions pronounced in favour of a request for the suspension of legal proceedings taken out against Members; the requests concerned were, in accordance with the above-mentioned former text of Rule 5(3) of the Rules of Procedure, submitted by other Members of the same nationality. In the first case, a request was submitted for the suspension of proceedings taken out against a Belgian Member who had been arrested (and subsequently released) for climbing over the fence of a military installation[80]. The second case concerned the suspension of proceedings taken out

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[79] See the Donnez report (A2-0121/86), pp. 15-16. In its opinion on the proposed revision of the PPI adopted following that report, Parliament proposed that this provision be clarified via the following amendment to the second paragraph of Article 10: 'Immunity from arrest and measures depriving them of their personal freedom cannot be claimed where members are found in the act of committing an offence'.

[80] See A2-0151/85 - decision of 13 November 1985; OJ No. C 345, 31.12.1985, p. 27.

against two Members from the FRG for failing to respect a police order breaking up a demonstration in Bonn[81]. In both cases, Parliament accepted the interpretation of the Committee on Legal Affairs and Citizens' Rights to the effect that the requests concerned were admissible, given that the relevant legislation (Article 45 of the Belgian Constitution and Article 46 of the Basic Law of the FRG respectively) provided for the possibility of requesting suspension of proceedings already initiated, and that the reference to national law in Article 10 of the PPI permitted the attribution of this right to Members who were nationals of the Member States in question.

IV - The procedure for waiving parliamentary immunity

The final section of the third paragraph of Article 10 of the PPI concerns Parliament's right to waive the immunity of individual Members.

By referring to a right of Parliament, this rule emphasizes the institutional purpose of this prerogative, which is intended to safeguard the independence and normal functioning of the institution as such. In addition, Article 28 of the 1965 merger treaty, as cited above, may be read as implying that the PPI should enable Parliament to fulfil its functions as a Community institution.

The effect of this general principle is that, in accordance with the interpretation of the European Court of Justice, the reference to national law in subparagraph (a) of the first paragraph of Article 10 of the PPI is to be interpreted in restrictive terms as being a special provision concerning only the material substance of the immunity of a Member when in the Member State of which he is a national[82].

It may also be concluded from the same interpretation that the procedure for waiving a Member's immunity referred to in the third paragraph of Article 10 of the PPI should, given that it is in no way related to the material substance of the immunities recognized under national legislation, be based on Community law.

Nonetheless, since Community law contains no specific provision concerning the waiving of immunity, it is up to Parliament to determine the nature of the procedure, on the basis of the powers in respect of its own internal organization conferred on it by Article 142 of the EEC Treaty.

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81 A2-0035/86 - decision of 12 May 1986; OJ No. C 148, 16.6.1986.

82 This interpretation of the European Court of Justice led, as mentioned above, to the definition of the duration of Parliament's sessions: cf. the decisions already cited, in ECJ Reports 1986, especially pp. 2398 and 2407, and ECJ Reports 1964, pp. 423 ff.

Rule 5 of Parliament's Rules of Procedure is the only procedural provision existing on the subject.

Parliament's practice over the years has, however, consolidated a series of basic guidelines applying to the procedure for waiving a Member's immunity.

This question was initially regulated by the former Rule 45 of the Rules of Procedure of the ECSC Joint Assembly, on which Parliament's original Rules of Procedure, adopted in 1958, were based. Following the revisions of the Rules in 1962[83] and 1967[84], the provisions concerned were incorporated successively in Rules 50 and 51. Following the 1981 revision[85], the provisions concerning immunity of the former Rule 51(2) and (6) became Rule 5, as has remained the case until now. None of these changes, however, entailed substantive divergences from the original wording.

In 1981 an interpretative rule was adopted concerning the content of and voting on the proposal for a decision included in the report of the competent committee; this interpretation was adopted at the meeting of the committee of 7 April 1981 and announced at the sitting of 14 September 1981.

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[83] Cf. OJ No. 97, 15.10.1962, pp. 2437-62.

[84] Cf. OJ No. 280, 20.11.1967.

[85] Doc. 1-920/80, of 23 February 1981 (the Luster report) and resolution of 23 March 1981 (OJ No. C 90, 21.4.1981, p. 48)

In 1988, at the sitting of 13 April[86], two amendments were adopted to Rule 5 concerning, respectively, the examination by the competent committee of requests for immunity to be waived and the moment of the vote. The present wording has been in force since 8 June 1992, following the most recent revision adopted at the sitting of 13 May 1992[87].

Rule 5(1) of the Rules of Procedure states:

'Any request addressed to the President by the appropriate authority of a Member State that the immunity of a Member be waived shall be communicated to Parliament in plenary sitting and referred to the appropriate committee.'

Under subparagraph (a) of the first paragraph of Article 10 of the PPI, a request submitted to Parliament is valid where drawn up and forwarded by the authorities which, under the relevant national legislation, are competent to submit and forward a similar request to the parliament of the Member State concerned.

At the sitting of 23 October 1991, Parliament rejected a proposal by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, based on Rule 102 of the Rules of Procedure, that no debate be held on the respective requests for the immunity of two Greek Members to be waived (A3-0269/91). The committee considered these requests to be inadmissible on the grounds that they were invalidated by the relevant Greek authorities being in breach of Article 10 of the PPI and Article 62 of the Greek Constitution[88]. Parliament's rejection of this proposal, on the grounds that it was essential to proceed to the consideration of, debate on and subsequent decision concerning the requests in question, was in line with the opinion of the Legal Service on the matter[89]. This opinion was as follows: given the principle of separation of competences, Parliament is not entitled to determine whether an internal procedure of a Member State is in accordance with its national law in connection with the admissibility of a request; provided the independence of Parliament and its Members is not affected, the precise moment at which, in the context of the preparation of legal proceedings, a request for a waiver of immunity is to be drawn up prior to initiation of the

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86 OJ No. C 122, 9.5.1988, p. 75 (A2-0289/87)

87 Cf. OJ No. C 150, 15.6.1992, p. 79 (A3-0053/92).

88 According to the committee, the irregularity arose because the Greek authorities had taken out proceedings and summoned the Members concerned before the court referred to in Article 86(1) of the Greek Constitution without having previously secured the waiver of their parliamentary immunity.

89 A3-0269/91, Annex II; cf. Debates of Parliament, 3-410. pp. 118-126.

judicial action is to be determined by the national law of the Member States.

At the beginning of the legislative term following the second direct elections to Parliament, in 1984, a debate was held concerning the problem of a number of requests for immunity to be waived on which no decision had been reached during the lifetime of the previous Parliament.

At the sitting of 25 October 1984 Parliament, rejecting a proposed interpretation in the opposite sense, decided that those requests should not be considered to have lapsed, on the grounds that the essential aim of Rule 136 of the Rules of Procedure[90] was to consolidate Parliament's position as regards the process of consulting the two Community institutions concerned, i.e. the Commission and the Council. This objective, while politically justified, could not be extended to include requests for immunity to be waived. The submission of such requests is, in fact, not a discretionary act on the part of the judge concerned; the judge is obliged both to give effect to the criminal proceedings and to interrupt the process once it is established that the person concerned is a Member of the European Parliament.

This decision made it possible to avoid delays caused by the return to the national authorities - in some cases via complicated and long-winded procedures - of legal dossiers which would have then been automatically re-forwarded to Parliament through the same channels. This would not have been conducive to an image of Parliament as a dynamic institution concerned to make rational and rapid use of its power to waive its Members' immunity where necessary.

The committee responsible in this field has been, since 1987, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities; the task had previously fallen to the Committee on Legal Affairs and Citizens' Rights.

The present text of Rule 5(2) of the Rules of Procedure is the result of a decision adopted by Parliament at the sitting of 13 May 1992. It reads:

'The committee shall consider such requests without delay and in the order in which they have been submitted.'

This rule takes account of earlier decisions of the committee concerning the time limit and the order of handling requests for immunity to be waived.

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[90] Rule 136 reads: 'At the end of the last part-session before elections, all requests for advice or opinions, motions for resolutions and questions shall be deemed to have lapsed. This shall not apply to petitions and communications that do not require a decision.'

With regard to the time limit, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities has followed the interpretation of Parliament's Legal Service to the effect that the rules existing in the Member States setting a time limit for approval of a decision to proceed or otherwise with a waiver of immunity are not applicable to the process of waiving the immunity of Members of the European Parliament[91].

In the case of Members having a dual mandate, Parliament, in accordance with a decision adopted by the competent committee at the beginning of the legislative term following the first direct elections[92], has traditionally waited for the decision of the national parliament concerned. Although the processes in question are mutually independent, it has been considered desirable, for both political and practical reasons, to await the national parliament's position on a request before proceeding to its examination. This practice accounts for the delay which sometimes characterizes Parliament's decisions.

The most recent revision of Rule 5, in May 1992, added a new paragraph 2a, which reads as follows:

2a.'The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary to form an opinion on the justification for waiving immunity. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems appropriate with regard to the above justification. He may have himself represented by another Member.'

This clarifies the earlier wording of Rule 5(2), introducing further provisions permitting the committee to ask for data not contained in the original request for immunity to be waived and also enabling the Member concerned to submit such data. These provisions, together with those of the last section of Rule 5(3a), reinforce the legitimacy of the committee's right to obtain detailed information concerning each case examined and to have at its disposal for this purpose all the elements which it considers to be necessary for it to reach a decision.

In the case of two recent requests, both involving the same Member (A3-0269/92 and A3-0270/92), Parliament based its refusal to waive the Member's immunity on the failure of the national authorities in question, in breach of their duty to cooperate under Article 5 of the EEC Treaty, to provide certain information which had been asked for as being indispensable for the consideration of the requests concerned. This omission was considered by the Committee

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91 Cf. A3-0269/91, p. 6.

92 This decision was adopted by Parliament's Committee on Legal Affairs and Citizens' Rights at its meeting of 27 October 1980, in accordance with the conclusions of working document PE 67.868/fin. by Mr Ferri.

on the Rules of Procedure, the Verification of Credentials and Immunities to justify the non-admissibility of the requests.

The Member concerned by the request is now also entitled to have himself represented by another Member at his hearing by the committee, even if he is not actually in custody[93].

In its exercise of the powers conferred on it by the second subparagraph of Rule 124(2) of the Rules of Procedure, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities considers requests for immunity to be waived at meetings closed to the public[94]. The purpose of this practice is to ensure confidentiality, in the interests of both the Member concerned and the committee and its members and on the basis of a free and unbiased debate; this is particularly important in cases of this nature.

The revision of the Rules of Procedure of May 1992 also included the rewriting of Rule 5(3), introducing two new provisions:

3. *'The committee's report shall contain a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity. However, where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate proposal for a decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any measure of detention, remand or any other measure which prevents him from performing the duties proper to his mandate.*

3a. *The committee shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether the opinions or acts attributed to him justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.'*

Rule 5(3) is intended to resolve certain technical problems which had arisen from the obligation to proceed to a single vote on the proposal for a decision included in the report in cases where

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[93] The earlier text of Rule 5(2) confined this possibility to cases where the Member was in custody. However, even before the rule was revised the committee had in practice permitted the Member concerned to have himself represented by another Member, even where there were no restrictions on his movements.

[94] The principle of confidentiality respecting matters concerning Members' immunity had already been adopted by the Committee on Legal Affairs and Citizens' Rights at its meeting of 18 September 1984.

several different charges were involved. The new provision introduces the possibility, in such cases, of submitting more than one proposal for a decision, each relating to one of the various charges.

Parliament has also on occasion been obliged to waive a Member's immunity in respect of a criminal action against him while maintaining it in respect of preventive arrest or imprisonment, so as to ensure that the Member was not precluded from exercising his mandate[95] by purely preventive measures prior to the final verdict[95]. The current wording of Rule 5(3) thus expressly permits this possibility.

Rule 5(3a) makes explicit the traditional principle according to which the committee is not empowered to pronounce on the guilt or innocence of the Member concerned, since this is obviously the responsibility of the judicial bodies.

The current text of Rule 5(4) incorporates the majority of the interpretations which had earlier been added as notes to the previous version, and also adapts the wording to permit the possibility of drawing up and considering more than one proposal for a decision:

'4.The report of the committee shall be entered as the first item on the agenda of the first part-session following its submission. No amendment to the proposal for a decision or proposals for decisions shall be permitted.

The debate shall be confined to the reasons put forward for and against each of the proposals with a view to waiving or not waiving the Member's immunity.

A vote shall immediately be taken at the end of the debate.

The debate in Parliament shall be followed by a vote on each of the proposals contained in the report. Where one of the proposals is rejected, the contrary decision shall be deemed adopted.'

The debate in plenary is thus organized in such a way as to satisfy the requirements of urgency and rationality while avoiding pointless delays and digressions.

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities had proposed, in its report A3-0053/92 (rapporteur: Mr Gil-Robles Gil-Delgado), that the vote in plenary should be secret where a minimum of twenty-three Members so requested. This would have reduced the quorum which is normally

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[95] Cf., in particular, the report of the Committee on Legal Affairs and Citizens' Rights of 28 November 1984, Doc. 2-1105/84, and the decision of Parliament of 10 December 1984 (OJ No. C 12, 14.1.1985, p. 12).

required by Rule 97(2) ('if requested by at least one-fifth of the current Members of Parliament'), on the grounds that 'this modification, which is less drastic than establishing a secret ballot in all cases (i.e. of waivers of immunity), would make it possible to weigh up the advantages deriving from each system'[96].

The proposed amendment did not, however, meet with the requisite majority for adoption in plenary.

Finally, Rule 5(5) states:

'5.The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request that he should be informed of any judicial rulings made as a consequence of the suspension of parliamentary immunity. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate.'

The procedure thus concludes with the immediate communication of the decision of the national authorities concerned. However, in cases where the decision reached is dependent on the Member's immunity being waived, the President of Parliament is obliged to ask to be kept informed on the progress of the legal proceedings in question. To request such information does not entail an intention to publicize the judgments or an attempt at exercising control over the decisions of the national courts. The aim is purely to permit greater understanding of the consequences of the decisions of Parliament and to obtain data making it possible to determine to what extent requests for immunity to be waived are in fact followed by concrete legal results.

The legitimacy of this provision is based on the general duty of cooperation between the Member States and the Community institutions stipulated in Article 5 of the EEC Treaty and Article 19 of the PPI. This duty includes, inter alia, the mutual obligation to provide the information required if all parties are to fulfil their functions.

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[96] A3-0053/92, Part B, IV - justification of Amendment No. 5, p. 13 (of English version)

V - Parliamentary practice

1. During the period before the first direct elections in 1979 only one case arose in which a waiver of immunity was requested[97]. After 1981 and following the introduction of elections by universal suffrage, the significant increase in the number of Members and the progressive reduction in the number of dual mandates, a substantial increase occurred in the number of requests for immunity to be waived.

In the meantime, parliamentary practice has developed and consolidated a set of principles and criteria intended to function as guidelines for the committee concerned.

The reports of the committee regularly cite the principles which govern consideration of requests for immunity to be waived. These principles are based in part on the judgments of the European Court of Justice (most of the cases concerned have already been referred to above). They may be summarized as follows:

a) the purpose of parliamentary immunity is not to create a privilege benefiting individual Members, but, rather, to guarantee the independence of Parliament and its Members vis-à-vis other bodies;

b) renunciation of parliamentary immunity by an individual Member is without legal effect;

c) immunity is effective throughout a Member's term of office;

d) immunity in the European Parliament is autonomous in character vis-à-vis immunity in the parliaments of the Member States; despite the reference to national immunities in subparagraph (a) of the first paragraph of Article 10 of the PPI, decisions reached by the European Parliament concerning requests for Members' immunity to be waived may legitimately constitute an autonomous body of precedent vis-à-vis the various parliamentary practices of the Member States; the existence of a coherent body of general principles and guidelines further enables the decisions of Parliament and of its competent committee to be reached independently of any influence by considerations related to the political affiliation or nationality of the Member concerned.

The application of these principles has revealed a constant element in Parliament's decisions, which has become a fundamental criterion for determining the decision to be taken on individual requests for immunity to be waived, i.e.: ***in all cases where the charges against a Member are related to the exercise of a political activity, his immunity is not to be waived.***

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[97] See Doc. 27/64, 6 May 1964 (decision of 15 July 1964), OJ No. C 109, 9.7.1964, p. 1669).

This criterion has been complemented by other considerations which may militate either for or against a decision to waive the Member's immunity. These include:

-*the existence or otherwise of 'fumus persecutionis'*, i.e. the presumption that the legal action in question arises from an intention to undermine the Member's political activity;

-*the particularly severe nature of the charges.*

A further criterion has been proposed, on the basis of the principle of equal treatment for all Members, to the effect that immunity is not to be waived in cases where the charges involve actions which are not considered to be offences in any Member State other than the Member State of origin of the Member concerned[98].

This notion, however, has not been recognized or consolidated as a criterion for evaluation. Nonetheless, some of the more recent reports of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities refer to the notion, while adding that the proposed criterion requires detailed examination.

2. Between the introduction of direct elections to Parliament and 31 December 1992, a total of 67 requests for parliamentary immunity to be waived were examined[99]. Parliament decided in plenary against waiving immunity in 13 cases, i.e. 19.4% of the total.

Parliament adopted the recommendations of the competent committee in all but five cases[100].

The area considered to constitute Members' political activity has so far been defined on an extremely broad and flexible basis. Thus, in the overwhelming majority of cases of requests for immunity to

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98 Cf., in particular, Debates of Parliament No. 2-358, p. 10; No. 1-313, p. 14; No. 2-364, p. 5; and No. 2-359, p. 6.

99 Cf. attached list. The total does not include a case of authorization for a Member to make a statement (A3-0112/91 - decision of 14 May 1991, OJ No. C 158, 17.6.1991), as it was decided that this did not constitute a request for immunity to be waived. Also excluded are a number of decisions concerning requests for the suspension of legal proceedings already under way (A2-0151/85 and A2-0035/86, published respectively in OJ No. C 345, 31.12.1985, p. 27 and OJ No. C 148, 16.6.1986, p. 16). The most recent request for immunity to be waived to be examined (A3-0407/92) concerned three Members.

100 See A2-0195/85 (decision of 13 January 1986, OJ No. C 36, 17.12.1986); A2-0101/86 (decision of 6 October 1986, OJ No. C 283, 10.11.1986); A3-0088/89 (decision of 11 December 1989, OJ No. C 15, 22.1.1990); A3-0040/90 (decision of 12 March 1990, OJ No. C 96, 17.4.1990); and A3-0269/91 (decision of 23 October 1991, OJ No. C 305, 25.11.1991).

be waived, the competent committee has taken the view that the actions concerned fell within the sphere of the Member's political activity.

A study by the Legal Service of Parliament, dated 19 April 1990 (PE 140.196), contains an analysis of the limits fixed by the competent committee for the purpose of defining what may be considered a political act. It concludes that there are three groups of cases in which the committee has refused to accept the interpretation that the acts imputed to the Member fell within the sphere of his political activity, i.e.:

a) all cases where the acts were considered to constitute a threat to individuals or to democratic society

(examples: support for persons guilty of terrorist acts; membership of criminal organizations; drug trafficking; participation in demonstrations equipped with dangerous objects which could constitute a threat to others' lives);

b) all cases of defamation where the injured party or parties were considered to have been denigrated as individuals rather than as representatives of an institution (i.e. of administrative bodies, media organs, etc.)

(examples: verbal and written attacks on an individual police officer directed at him personally rather than at the police as such; a written attack on a journalist directed at him personally without reference to the press in general or to a particular newspaper);

c) all cases involving a clear-cut breach of the criminal law or of administrative rules or provisions where there was no connection whatever with any political activity

(examples: failure to report a road accident; insulting police officers after being found driving with irregular number-plates; construction of a cistern without a licence; nepotism involving financial favours; accounting fraud).

The conclusions of this study appear still to apply if one also examines Parliament's decisions concerning immunity since the publication of the Legal Service's study.

Within the broad area of acts which may be considered as falling under the definition of Members' political activity, one may also distinguish a significant group of cases which may be placed in the category of supposed offences against a person's reputation or 'crimes of opinion' (insults, defamation, etc.) - that is, acts which, while falling outside the scope of Article 9 of the PPI, may nonetheless be considered as falling within that of Article 10.

At its meeting of 17 and 18 September 1990, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities adopted a resolution (PE 141.446/fin.) including the following criterion: 'any request for the waiver of immunity resulting from

the free expression of ideas or political opinions should be rejected as a matter of principle; the only exceptions to this fundamental right should be incitement to any kind of hatred, slander, libel, questioning the honour or good name of others, whether individuals or groups, and action prejudicial to fundamental human rights.'

With respect to the problem of determining the existence or otherwise of 'fumus persecutionis', the committee has consistently taken into consideration the possible presence of certain elements relating to the complaint against the Member. These include: anonymity of the complaint[101]; delayed submission of the request in relation to the date of the alleged acts[102]; an apparent link between the date of the complaint and the Member's election to Parliament[103]; instigation of legal proceedings against the Member alone where more than one person could be considered liable[104]; and cases where the charge was manifestly unfounded (e.g. where it concerned decisions for which the Member was not responsible or where no proof existed of his involvement in the supposed acts) or there was a clear intention of penalizing the Member for his political activities[105].

In the same resolution, the committee also expressed the view that the presumption of 'fumus persecutionis' necessitates the existence of a precise, direct and reasonable link between the circumstances surrounding the legal action 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.

The criterion of the non-serious nature of the offences with which the Member is charged has also, on several occasions, contributed to a decision to refuse a request for immunity to be waived[106]. In particular, account has been taken of circumstances where the acts imputed to the Member did not give rise to violent situations, material damage or harm to third persons.

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[101] Doc. 1-321/81

[102] Docs. 1-321/81 and 1-123/84; A2-0165/85, A2-0168/85, A2-0188/87 and A2-0413/88

[103] Doc. 1-321/81

[104] A2-0191/85 and A2-0090/88

[105] A2-0191/85, A2-0034/86, A2-0042/89, A3-0076/92 and A3-0077/92

[106] See, for instance, the cases cited in session documents A2-0413/88 and A3-0009/91.

The acts in respect of which a request for a Member's immunity to be waived was submitted and accepted by Parliament include the following: provision of assistance to criminals to enable them to escape justice (Doc. 1-1311/82 and A2-0191/85); participation in a criminal organization ('Nuova Camorra Organizzata') and drug trafficking (Doc. 2-1105/84); possession at a demonstration of objects liable to cause injury to persons and property (A2-0013/85); parking in a prohibited area (A2-0070/86); encouragement and organization of the reconstitution of a dissolved fascist party (A2-0195/85)[107]; failure to report a road accident (A2-0105/85); insulting a representative of law and order (A2-0105/85); insult or defamation directed against individuals (A2-0217/88, A2-0130/88 and A3-0088/89)[107] or groups (A3-0040/90)[107]; and financial offences involving embezzlement and fraud (A3-0018/91).

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[107] In the cases described in A2-0195/85, A3-0088/89 and A3-0040/90, Parliament waived the immunity of the Members in question contrary to the recommendation of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, which had concluded in the various cases either that 'fumus persecutionis' was involved or that the acts concerned were simply expressions of opinion in the context of the political activity of the Member concerned.

ANNEX 1

Requests for immunity to be waived in respect of Members of the European Parliament from the first directly elected Parliament up to December 1992

Session document	Date of decision	Decision	Date of publication
1-0072/81	7.4.1981	Not waived	OJ No. C 101, 4.5.1981, p. 24
1-0321/81	7.7.1981	Not waived	OJ No. C 234, 14.9.1981, p. 25
1-1082/81	9.3.1982	Not waived	OJ No. C 87, 5.4.1982, p. 37
1-0298/82	16.6.1982	Not waived	OJ No. C 182, 19.7.1982, p. 24
1-0832/82	16.11.1982	Not waived	OJ No. C 334, 20.12.1982, p. 25
1-1311/82	7.3.1983	Waived	OJ No. C 96, 11.4.1983, p. 13
1-0766/83	10.10.1983	Not waived	OJ No. C 307, 14.11.1983, p. 14
1-0123/84	9.4.1984	Not waived	OJ No. C 127, 14.5.1984, p. 8
2-1105/84	10.12.1984	Waived	OJ No. C 12, 14.1.1985, p. 12
A2-0013/85	15.4.1985	Waived	OJ No. C 122, 20.5.1985, p. 17
A2-0014/85	15.4.1985	Not waived	OJ No. C 122, 20.5.1985, pp. 17-18
A2-0046/85	10.6.1985	Not waived	OJ No. C 175, 15.7.1985, p. 23
A2-0105/85	7.10.1985	Waived	OJ No. C 288, 11.11.1985, p. 14
A2-0164/85	9.12.1985	Not waived	OJ No C 352, 31.12.1985, p. 16
A2-0165/85	9.12.1985	Not waived	OJ No. C 352, 31.12.1985, pp. 16-17
A2-0168/85	9.12.1985	Not waived	OJ No. C 352, 31.12.1985, p. 17
A2-0191/85	13.1.1986	Waived	OJ No. C 36, 17.2.1986, p. 14
A2-0195/85	13.1.1986	Waived	OJ No. C 36, 17.2.1986, pp. 14-15
A2-0214/85	17.2.1986	Not waived	OJ No. C 68, 24.3.1986, p. 21
A2-0033/86	12.5.1986	Not waived	OJ No. C 148, 16.6.1986, p. 15
A2-0034/86	12.5.1986	Not waived	OJ No. C 148, 16.6.1986, pp. 15-16
A2-0070/86	7.7.1986	Waived	OJ No. C 227, 8.9.1986, p. 14
A2-0101/86	6.10.1986	Not waived	OJ No. C 283, 10.11.1986, p. 13
A2-0145/86	10.11.1986	Not waived	OJ No. C 322, 15.12.1986, p. 17
A2-0220/86	16.2.1987	Not waived	OJ No. C 76, 23.3.1987, p. 21
A2-0221/86	16.2.1987	Not waived	OJ No. C 76, 23.3.1987, pp. 21-22
A2-0036/87	11.5.1987	Not waived	OJ No. C 156, 15.6.1987, p. 18

Requests for immunity to be waived in respect of Members of the European Parliament from the first directly elected Parliament up to December 1992
(Continued)

Session document	Date of decision	Decision	Date of publication
A2-0037/87	11.5.1987	Not waived	OJ No. C 156, 15.6.1987, pp. 18-19
A2-0038/87	11.5.1987	Not waived	OJ No. C 156, 15.6.1987, p. 19
A2-0099/87	6.7.1987	Not waived	OJ No. C 246, 14.9.1987, p. 14
A2-0176/87	26.10.1987	Waived	OJ No. C 318, 30.11.1987, p. 9
A2-0188/87	16.11.1987	Not waived	OJ No. C 345, 21.12.1987, p. 14
A2-0226/87	14.12.1987	Not waived	OJ No. C 13, 18.1.1988, p. 18
A2-0274/87	8.2.1988	Not waived	OJ No. C 68, 14.3.1988, p. 16
A2-0309/87	7.3.1988	Not waived	OJ No. C 94, 11.4.1988, p. 15
A2-0005/88	11.4.1988	Not waived	OJ No. C 122, 9.5.1988, p. 15
A2-0090/88	13.6.1988	Not waived	OJ No. C 187, 18.7.1988, p. 16
A2-0130/88	4.7.1988	Waived	OJ No. C 235, 12.9.1988, p. 13
A2-0191/88	10.10.1988	Not waived	OJ No. C 290, 14.11.1988, p. 13
A2-0217/88	24.10.1988	Waived	OJ No. C 309, 5.12.1988, p. 11
A2-0266/88	12.12.1988	Not waived	OJ No. C 12, 16.1.1989, p. 19
A2-0340/88	16.1.1989	Not waived	OJ No. C 47, 27.2.1989, p. 15
A2-0413/88	13.3.1989	Not waived	OJ No. C 96, 17.4.1989, p. 16
A2-0042/89	10.4.1989	Not waived	OJ No. C 120, 16.5.1989, p. 18
A3-0067/89	20.11.1989	Not waived	OJ No. C 323, 27.12.1989, p. 16
A3-0088/89	11.12.1989	Waived	OJ No. C 15, 22.1.1990, p. 18
A3-0040/90	12.3.1990	Waived	OJ No. C 96, 17.4.1990, p. 20
A3-0229/90	8.10.1990	Not waived	OJ No. C 284, 12.11.1990, p. 21
A3-0247/90	22.10.1990	Not waived	OJ No. C 295, 26.11.1991, p. 9
A3-0377/90	21.1.1991	Not waived	OJ No. C 48, 25.2.1991, p. 14
A3-0018/91	18.2.1991	Waived	OJ No. C 72, 18.3.1991, p. 16
A3-0009/91	18.2.1991	Not waived	OJ No. C 72, 18.3.1991, p. 16
A3-0066/91	15.4.1991	Not waived	OJ No. C 129, 20.5.1991, p. 22
A3-0068/91	15.4.1991	Not waived	OJ No. C 129, 20.5.1991, p. 22
A3-0067/91	15.4.1991	Not waived	OJ No. C 129, 20.5.1991, p. 23
A3-0230/91	7.10.1991	Not waived	OJ No. C 280, 28.10.1991, p. 56

Requests for immunity to be waived in respect of Members of the European Parliament from the first directly elected Parliament up to December 1992

(continued)

Session document	Date of decision	Decision	Date of publication
A3-0229/91	7.10.1991	Not waived	OJ No. C 280, 28.10.1991, p. 56
A3-0303/91	18.11.1991	Not waived	OJ No. C 326, 16.12.1991, p. 19
A3-0038/92	10.2.1992	Not waived	OJ No. C 67, 16.3.1992, p. 16
A3-0039/92	10.2.1992	Not waived	OJ No. C 67, 16.3.1992, p. 16
A3-0077/92	9.3.1992	Not waived	OJ No. C 94, 13.4.1992, p. 17
A3-0076/92	9.3.1992	Not waived	OJ No. C 94, 13.04.1992, p. 17
A3-0196/92	8.6.1992	Not waived	OJ No. C 176, 13.7.1992, p. 16
A3-0269/92	26.10.1992	Not waived	OJ No. C 305, 23.11.1992, p.
A3-0270/92	26.10.1992	Not waived	OJ No. C 305, 23.11.1992, p.
A3-0383/92	14.12.1992	Not waived	Minutes, p. 1
A3-0407/92*	14.12.1992	Not waived	Minutes, p. 2

* This request concerns three Members.

Protocol on the Privileges and Immunities of the European Communities

Article 9

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 10

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.

Rules of Procedure of the European Parliament

Rule 5

1. Any request addressed to the President by the appropriate authority of a Member State that the immunity of a Member be waived shall be communicated to Parliament in plenary sitting and referred to the appropriate committee.

2. The committee shall consider such requests without delay and in the order in which they have been submitted.

2a. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary to form an opinion on the justification for waiving immunity. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems appropriate with regard to the above justification. He may have himself represented by another Member.

3. The committee's report shall contain a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity. However, where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate proposal for a decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any measure of detention, remand or any other measure which prevents him from performing the duties proper to his mandate.

3a. The committee shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether or not the opinions or acts attributed to him justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.

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

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

At the end of the debate there shall be an immediate vote.

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

5. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request that he should be informed of any judicial rulings made as a consequence of the suspension of parliamentary immunity. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate.

BIBLIOGRAPHY

1. Comparative and general studies

- DE VERGOTTINI G., Diritto costituzionale comparato, Padua, 1981, pp. 270-271

- European Parliament (Legal Service), Le statut des parlementaires dans les Etats membres: irresponsabilité et inviolabilité, Committee on the Rules of Procedure, the Verification of Credentials and Immunities, 26 April 1990, PE 140.198

- FERNANDEZ-MIRANDA y CAMPOAMOR Alfonso, La inmunidad parlamentaria en la actualidad, in Revista de estudios políticos (1977), No. 215

- FERNANDEZ-MIRANDA y CAMPOAMOR Alfonso, Origen histórico de la inviolabilidad e inmunidad parlamentaria, in Revista de la Facultad de Derecho de la Universidad Complutense (1986), No. 10, pp. 175-205

- GARCIA Eloy, Crisis jurídica y crisis política de la inmunidad parlamentaria, in Revista de las Cortes Generales (1989), No. 18, pp. 67-118

- GARCIA LOPEZ Eloy, La problemática jurídico-política de la inmunidad parlamentaria, in Boletín mejicano de derecho comparado (1989), No. 64, pp. 95-125

- HERZOG J.B., Les immunités parlementaires en droit comparé, in Revue internationale d'histoire politique et constitutionnelle (1956), pp. 73 ff.

- Interparliamentary Union, Les Parlements dans le monde, Paris, PUF

- JOTTI N., Tema di privilegi e immunità parlamentari, in Boll. informaz. cost. e parl. (1982), No. 3, pp. 107 ff.

- KAHN A.A., Les privilèges et immunités du Parlement et des parlementaires, in Informations constitutionnelles et parlementaires (1977), No. 110, pp. 75-148 (also exists in English)

- PIZZORUSSO Alessandro, Dissonanza e incomprensioni tra la concezione costituzionalistica delle immunità, in Rivista Italiana di Diritto e Procedura Penale (1984), No. 2, pp. 566-568

- PIZZORUSSO Alessandro, Las inmunidades parlamentarias - un enfoque comparatista, in Revista de las Cortes Generales (1984), No. 2, pp. 27-50

- TOMMASINI G., Immunité parlementaire, in Informations constitutionnelles et parlementaires (1951), No. 8, pp. 237-251 (also exists in English)

2. Specific national studies

BELGIUM

- DUFFAU J.M., Les règlements des Assemblées parlementaires belges, in Revue du droit public 92 (1976), No. 3, pp. 749-885 (pp. 768-775: Les immunités parlementaires)

- HAYOIT de TERMICOURT, L'immunité parlementaire, J.T., 1955, pp. 613 ff., and R.D.P.C., 1955-1956, pp. 279 ff.

- SOUMERYN Guy, L'immunité parlementaire: évolution et aspects nouveaux, in Res Publica, XVII (1975), No. 1, pp. 53-68

- VELU Jacques, Droit Public - vol. I: Le Statut des Gouvernants, Brussels, 1986, pp. 493-509

DENMARK

- GERMER Peter, Statsforfatningsret, Copenhagen, Jurist- og Økonomforbundets Forlag, vol. I, 1988, pp. 73-78

- ROSS Alf, Dansk Statsforfatningsret, 3. gennemarbejdede udgave ved Ole Espersen, Copenhagen, Nyt Nordisk Forlag Arnold Busck, 1983, pp. 358 ff.

- THESTRUP K., Nogle bemærkninger vedrorende grundlovens 57, 1. stk., Juristen 44 (1962), No. 1, pp. 12-14

- ZAHLE Henrik, Dansk forfatningsret, Copenhagen, Christian Ejlers Forlag, 1989, vols. 1-4

FRANCE

- Entry: Immunité parlementaire, in Le Dictionnaire constitutionnel, P.U.F., 1992

- GAUDEMET Paul-Marie, entry: Immunités, in Encyclopédie Dalloz de Droit Criminel

- PRELOT M., Institutions politiques et droit constitutionnel, Paris, Dalloz, 1972 (pp. 763-767: Les immunités parlementaires)

- SOULIER G., L'inviolabilité parlementaire en droit français, L.G.D.J. 1969

- Le Statut du Député, Connaissance de l'Assemblée, Paris, Economica, 1989

GERMANY (FEDERAL REPUBLIC)

- DI CIOLO Vittorio, coll.; SERAFIN Elisabetta, Le immunità parlamentari nella Repubblica federale di Germania, in Il Foro Amministrativo (1983), No. 7-8, pp. 1811-1834

- FRIESENHAHN Ernst Rudolf, Zur Indemnität der Abgeordneten in Bund und Ländern, in Die Offentliche Verwaltung (1981), No. 13-14

- KLEIN Hans-Hugo, Indemnität und Immunität, in Parlamentsrecht und Parlamentspraxis in der Bundesrepublik Deutschland, ed. SCHNEIDER Hans-Peter and ZEH Wolfgang, Berlin and New York, Walter de Gruyter, 1989, § 17, pp. 555-592

- WURBS Richard, Regelungsprobleme der Immunität und der Indemnität in der parlamentarischen Praxis, Beiträge zum Parlamentsrecht, vol. 13, Berlin, Duncker & Humblot, 1988

GREECE (titles in English)

- D. YANNIS Nikos, Theory and Practice of Parliamentary Immunity in Greece and the Member States of the Community, Greek Chamber of Deputies, November 1990

- RAIKOS Athanassios, Constitutional Law, vol. I, 1990

- SARIPOLOS Nikolaos N., Constitutional Law, vol. I, 1915

- SGOURITSAS Christos, Constitutional Law, vol. I, 1959

- TSATSOS Dimitris, Constitutional Law, vol. II, 1992

- VENIZELOS Evangelos, Course in Constitutional Law, 1992

- YEORGOPOULOS Konstantinos, Summary of Constitutional Law, 1990

- ZENGELIS Ilias, Parliamentary Law, vol. I, 1906

SPAIN

- BIRIEGO GONZALEZ CAMINO Ignacio, Consideraciones sobre los parlamentarios como posibles autores de intromisiones ilegítimas en el derecho al honor en la Ley Orgánica 1/1982 de 5 de mayo, in La ley, revista jurídica española de doctrina, jurisprudencia y bibliografía (1991), No. 2896, pp. 1-4

- CARRO MARTINEZ Antonio, La inmunidad parlamentaria, in Revista de derecho político (1981), No. 9, pp. 87-109

- DI MUCCIO Pietro, Le immunità parlamentari in Spagna, in Quaderni Costituzionali (1990), no. 2, pp. 369-75

- FERNANDEZ-MIRANDA y CAMPOAMOR Alfonso, Del intento de ampliar el ámbito material de la inmunidad parlamentaria a determinados procedimientos civiles, in Revista española de derecho constitucional (1984), No. 12, pp. 9-21

- FERNANDEZ-MIRANDA y CAMPOAMOR Alfonso, Revista de derecho público - comentarios a las leyes políticas - Constitución española de 1978, vol. VI, pp. 305-376

- GARCIA Eloy, Inmunidad parlamentaria y Constitución democrática, in Revista de la Facultad de Derecho de la Universidad Complutense (1989), No. 15 (monograph), pp. 439-467

- MARTIN OSTOS José de los Santos, El enjuiciamiento penal de diputados y senadores en la Constitución española de 1978, in Revista de derecho procesal iberoamericana, No. 1, pp. 619-635

- MURILLO DE LA CUEVA Pablo Lucas, Sobre las inmunidades parlamentarias, in Revista de estudios políticos (1990), No. 69, pp. 189-199

- PUNSET BLANCO Ramón, Sobre la extensión del ámbito personal de las prerrogativas parlamentarias, in Revista española de derecho constitucional (1981), No. 3, pp. 91-119

- SANTAOLALLA LOPEZ F., Derecho parlamentario español, Madrid, 1984, pp. 83 ff.

IRELAND

- SMYTH J. McG., The theory and practice of the Irish Senate, Dublin, Institute of Public Administration, 1972 (pp. 44-45: 'Privileges and duties...')

ITALY

BRUNELLI D., entry: Immunità, in Enciclopedia giuridica Treccani, vol. XV, Rome 1989

- CAIANELLO V., Immunità e responsabilità nell'esercizio di pubbliche funzioni: evoluzione e quadro attuale, in Diritto e società, 1989, pp. 456-466

- CHIEFFI L., In margine alle proposte di revisione dell' art. 68 della Costituzione, in Diritto e società, 1987, pp. 277-293

- CIAURRO L., I provvedimenti coercitivi nei confronti dei parlamentari, in Diritto e società, 1986, pp. 293-328

- CIAURRO L., Le immunità parlamentari nei rapporti tra Parlamento e magistratura, in Parlamento, August-October 1986, pp. 28-30

- CIAURRO L., Immunità parlamentare e tutela dell'onorabilità personale, in Nuovi studi politici, July-September 1987, pp. 109-122

- CIAURRO L., L'arresto in flagranza del parlamentare, dopo la legge 5 agosto 1988 n. 330, in Giur. cost., 1988, II, pp. 2316-2327

- CIAURRO L., Autorizzazione a procedere e giudizio civile, in Quaderni costituzionali, No. 3/1989, pp. 509-527

- DI MUCCIO P., L'insindacabilità dei parlamentari: una introduzione allo studio dell'art. 68, primo comma, della Costituzione, in Diritto e società, 1988, pp. 681-720

- DI MUCCIO P., Il giudice dell'immunità parlamentare assoluta, in Parlamento, March-April 1988, pp. 23-24

- LONG G., Commento all'art. 68 Cost., in Commentario della Costituzione, ed. Branca, Le Camere, vol. II, pp. 185-239

- MIDIRI M., La riforma delle immunità parlamentari: alcuni interrogativi, in Diritto e società, 1985, pp. 725-728

- MIDIRI M., entry: Autorizzazione a procedere, in Enciclopedia giuridica Treccani, vol. IV, Rome 1988

- MORETTI R., Art. 68, in Commentario breve alla Costituzione, ed. Crisafulli and Paladin, Padua 1990, pp. 409-419

- POSTERARO F., entry: Prerogative parlamentari, in Enciclopedia giuridica Treccani, vol. XXIV, Rome 1991

- TABARRO P., L'inviolabilità dei parlamentari: prerogativa o privilegio?, in Rassegna parlamentare, No. 4, October-December 1990, pp. 490-502

- ZAGREBELSKY G., Le immunità parlamentari, Turin 1979

- ZANON M., La Corte costituzionale e la 'giurisprudenza' parlamentare in tema di immunità, in La legislazione penale, No. 2/1989, pp. 265-270

LUXEMBOURG

- MAJERUS P., L'Etat luxembourgeois, Luxembourg, Imprimerie St. Paul, 1970 (p. 186: Immunité parlementaire)

NETHERLANDS

- KRANENBURG R., Het Nederlandse Staatsrecht, Haarlem, Tjeenk Willink, 1958 (pp. 185-188: Parlementaire onschendbaarheid)

- RAALTE E. van, Het Nederlandse Parlement, The Hague, Staatsuitgeverij, 1971 (pp. 178-181: Parlementaire onschendbaarheid)

- RAALTE E. van, The Parliament of the Kingdom of the Netherlands, Zwolle, Tjeenk Willink, 1977 (pp. 279-280: Parlementaire onschendbaarheid)

PORTUGAL

- GOMES CANOTILHO and VITAL MOREIRA, Constituição da República Portuguesa Anotada, vol. II, p. 171

- MORAIS ISALTINO, FERREIRA DE ALMEIDA and LEITE PINTO, Constituição da República Portuguesa Anotada e Comentada, 1983

UNITED KINGDOM

- BRADSHAW K. and PRING D., Parliament and Congress, London, Constable, 1972 (pp. 93-102)

- House of Lords Select Committee on the European Communities, Privileges and Immunities of Members of the European Parliament, Session 1985-1986, 8th Report

- MAY Erskine, Law, Privileges, Proceedings and Usage of Parliament (20th edition), chapters 5 to 11

- McKAY W.R., Parliamentary Privilege in the UK, European Parliament, Committee on the Rules of Procedure, the Verification of Credentials and Immunities, 12 November 1991 (PE 154.300)

3. European Parliament

- CAVERO GOMEZ Manuel, La inmunidad de los diputados del Parlamento Europeo, in Revista de las Cortes Generales (1990), No. 20, pp. 7-48

- COCCIA Massimo, Osservazioni sulla immunità penale dei parlamentari europei, in Rivista di Diritto Internazionale, Milan (1985), No. 4, pp. 824-835

- DONNEZ Georges, report for the Committee on Legal Affairs and Citizens' Rights on the draft Protocol revising the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 in respect of the Members of the European Parliament - A2-0121/86, 10 October 1986

- JEUNIAUX Marie-Christine, Le statut personnel des membres du Parlement européen, Toulouse, Université des Sciences Sociales, March 1987, pp. 174-242

- SENEN HERNANDEZ Mercedes, Inviolabilidad e inmunidad en el Parlamento europeo, in Revista de las Cortes Generales (1986), No. 9, pp. 318-333

- Reports of the Committee on Legal Affairs and Citizens' Rights and the Committee on the Rules of Procedure, the Verification of Credentials and Immunities on requests for the immunity of individual Members of the European Parliament to be waived and on amending Rule 5 of the Rules of Procedure of Parliament (see second part of this text).