EUROPEAN PARLIAMENT

DIRECTORATE-GENERAL FOR RESEARCH

W O R K I N G P A P E R

PARLIAMENTARY IMMUNITY

IN THE MEMBERS STATES OF THE EUROPEAN UNION

AND IN THE EUROPEAN PARLIAMENT

Legal Affairs Series

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CONTENTS

INTRODUCTION

This study[1] consists of two main parts: the *first part* attempts to give a general overview of the national legal provisions as regards immunity, briefly describing 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*.

Preparations for the *first part* of this study required the cooperation of the competent services of the national parliaments. Most of them submitted their comments on, corrections or additions to the drafts sent to them. Their valuable input, for which we thank them most warmly, has enabled us to tackle some aspects relating to parliamentary practice and precedent and to the statistical data collected.

Immunity as such has been the subject of harsh criticism from the point of view of legal theory; it has been called anachronistic, obsolete and contrary to the fundamental principles of modern constitutional law (especially the principle of equality before the law). 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 originally lay behind the introduction of parliamentary immunity into the modern constitutions still exist, although they may have changed in some respects.

This debate has also frequently been held in the parliamentary arena itself; at times, this has resulted in some countries in a reform of legal procedures and changes in the practices followed by some parliamentary assemblies, leading towards a restriction in the scope of inviolability.

This study does not claim to extract uniform principles and trends from the many existing systems, much less from their complex and sometimes inconsistent application. It aims primarily at providing interested parties with an instrument for analysis and reflection, setting out in a single publication, in a concise and orderly manner, various isolated items of information which are not always easily accessible, in particular on linguistic grounds.

Part One of the study is concerned only with the systems of immunity applicable to the Members of national parliaments, although such systems have now become applicable, either in full or in part, 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).

The specific bibliographical references to each national legal system of immunities which were of most use in preparing the summaries presented in this document are given in the text itself or in the form of footnotes. In addition, a brief bibliography is given at the end of this publication. We refer therein to several comparative and general studies which proved very useful for the drawing up of the conclusions set out in the section entitled: 'Comparative Summary'.

1 This study updates the documents published in 1993 and 1996 by the European Parliament's Directorate-General for Research under the title: 'Parliamentary immunity in the Member States of the European Community (Union) and in the European Parliament' – Legal Affairs Series, W-4 and W-8, which set out the situation as it was in 1992 and 1995.

As might be expected, the analysis set out in *Part Two* relating to the immunity enjoyed by Members of the European Parliament is based mainly on the reports of the appropriate parliamentary committee.

Special reference should be made to the excellent series of studies on parliamentary immunity drawn up by the Legal Service of the European Parliament in 1990 (PE 140.196, PE 140.197 and PE 140.198) - on the basis of parliamentary reports -, which provided a valuable working basis for the drafting of this document and from which some extracts have been taken.

As far as possible, this publication takes into account the situation as it was in early 1999. The contributions from the competent authorities of the national parliaments were forwarded between March and June 1999. The section concerning the European Parliament takes account of the situation as it was at the end of the fourth parliamentary term (July 1999).

PART ONE

Parliamentary immunity in the Member States of the European Union

I. General remarks

1. Terminology

Most national legal systems provide for dual protection of Members of Parliament: non-liability for votes cast and opinions expressed in the performance of their duties and, as regards all other acts, prohibition of detention or legal proceedings without the authorisation of the Chamber of which they are Members.

However, the constitutions and/or legal theory applicable in the various Member States 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, 'Indemnität' or 'Verantwortungsfreiheit' (non-liability), or 'Abstimmungs- und Redefreiheit' (freedom of voting and expression)in the Federal Republic of Germany or even, as in Austria, 'berufliche Immunität' (professional immunity), and 'privilege' or 'freedom of speech' in the United Kingdom.

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

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

It should be emphasised, moreover, that this duality of concepts is comparatively unimportant in three Member States: the Netherlands, the United Kingdom and Ireland.

In the Netherlands, Members of Parliament do not enjoy any inviolability (immunity in the strict sense of the word), 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 practice in a similar way as in the United Kingdom.

2. Historical origin

The origins of parliamentary immunity date back to 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 behaviour at the court of King Richard II of England and the excessive financial burdens to which this gave rise. Thomas Haxey, the Member who was behind this direct act against the King and his court, was put on trial and sentenced to death for treason. Following pressure applied by the Commons, however, the sentence was not carried out, and Haxey received a royal pardon.

This event prompted the House of Commons to review the 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, was confirmed in Article 9 of the 1689 Bill of Rights which expressly protected discussions and acts of Members of Parliament from any form of interference or objection from outside Parliament.

Freedom from arrest also has an ancient English origin, but this privilege was connected, as we have seen, essentially with measures to restrict personal freedom resulting from civil proceedings.

In France, too, after the 1789 Revolution, the need was established to guarantee the non-liability of elected representatives for opinions expressed by them in the performance of their duties. Such non-liability was enshrined in law by the famous Decree of 23 June 1789, approved on a proposal from Mirabeau, which was followed by the proclamation, in a Decree dated 26 June 1790, of the privilege whereby Members of the Assembly might not be indicted without the latter's authorisation.

Through successive stages, this second type of immunity was gradually made more and more 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 performed by the Member of Parliament. The 1791 Constitution, 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 shall be notified thereof without delay, and proceedings may not be continued until the legislative body has decided that charges should be brought*'.

The relatively wider scope of parliamentary privileges in France, which were taken from the English model only in part, is closely connected with 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 and with the exercise of powers which are a reflection of the principle of national sovereignty.

Since then, parliamentary immunity has been enshrined as such 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 analyse the systems of immunity currently in force and, as far as possible, their application in the Member States, following the order in which they are listed in the Community Treaties[2].

Given the nature of this subject, and as we noted in the Introduction, all the texts were submitted first to the competent services of the national parliaments. Accordingly, the final version presented here is, to a large extent, the result of their respective comments, criticisms and contributions.

Preparations for this study have been subject to the greater or lesser relative quality or quantity of the information received, the varying degrees of development of case-law 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 the reasons behind the uneven manner in which each national system is analysed.

It was decided to subdivide this analysis into five chapters: the legal basis of immunity, the scope of the immunity, the duration thereof, the procedure for waiving parliamentary immunity and, finally, parliamentary practice. In the final chapter, we have tried to provide a global view of the criteria used for the application of general legal principles. Whenever possible, statistical information is provided on the number of requests for waiver of immunity processed over the past few years by the various parliaments and on the number of requests approved or rejected.

The texts of the main national legal provisions on the subject are given at the end of the analysis for each country.

The end of this first part sets out some general conclusions and a set of comparative tables on the main aspects of the rules governing this matter in the fifteen Member States.

2 Alphabetical order taking into account the name of each State in its own language.

II. THE SITUATION IN THE FIFTEEN MEMBER STATES

BELGIUM

I. The legal basis of parliamentary immunity

Article 58 of the Constitution establishes non-liability for opinions expressed and votes cast by Members of Parliament in the performance of their duties. Article 5a establishes the inviolability of Members of Parliament in criminal matters and sets out the conditions therefor.

Rule 93 of the Rules of Procedure of the Chamber of Representatives lays down the procedure to be followed for requests for authorisation to bring proceedings against a Member of the Chamber or suspension of proceedings already under way.

The Rules of Procedure of the Senate contain no specific provisions on the above subjects.

II. The scope of parliamentary immunity

Non-liability[3]

Article 58 of the Constitution stipulates that no Member of either House may be prosecuted or undergo investigation on account of the opinions expressed or votes cast in the performance of his duties.

The non-liability applying to Members of Parliament is subject to restrictions. Members of the Chamber of Representatives or the Senate are covered only in respect of the opinions expressed and votes cast in the exercise of their parliamentary office.

Actions which cannot be equated with *opinions expressed or votes cast* do not fall under the heading of non-liability. A Member of Parliament who committed assault or grievous bodily harm could consequently be prosecuted under both criminal and civil law. Furthermore, non-liability applies only to opinions expressed and votes cast *in the exercise of parliamentary office*, that is to say, speeches made in Parliament, votes cast, questions (whether put to Ministers, relating to points of order, or tabled in written or oral form), and proceedings in parliamentary bodies (Bureau, committees, committees of inquiry, etc.) or political groups. The non-liability rule also applies to the special missions which the Chamber or Senate might instruct particular Members to undertake, for instance when conducting a parliamentary inquiry[4]. On the other hand, the views expressed by a Member of either House at a press conference, in an interview, at a political rally, or on another

3 See especially H. VUYE, Les irresponsabilités parlementaire et ministérielle: les articles 58, 101, alinéa 2, 120 et 124 de la Constitution, *Chroniques de Droit public*, 1997, p. 2 ff.

4 J. VELU, Droit public, t. Ier: Le statut des gouvernants, Brussels, Bruylant, 1986, pp. 498-499, No 332.

similar occasion do not form part of his parliamentary duties, and non-liability therefore does not apply[5]. A Member will likewise not be covered if, when outside Parliament, he reproduces a speech made in the exercise of his office[6]. Non-liability, however, is not limited to opinions expressed or votes cast within the confines of Parliament. It may also extend to views put forward outside the Houses if the Member concerned was carrying out his parliamentary duties.

Secondly, the non-liability applying to Members of Parliament is absolute. No action, be it under criminal or civil law or of a disciplinary nature (arising from the office of member of parliament), may be brought against a Member of the Chamber or a Senator on account of statements made or votes cast in the performance of his duties. Article 58 of the Constitution prohibits not only all forms of proceedings, but also every kind of investigation. Non-liability thus debars any procedure connected with a judicial inquiry or preliminary investigation, seizures of correspondence, or searches. In addition, no Member of Parliament can be compelled to testify in court on the subject of his views or to reveal the sources of information on which they are based. However, Members are subject to the disciplinary authority of the House to which they belong. There is nothing in Article 58 of the Constitution to prevent disciplinary measures being taken against a Member who disrupts a sitting[7].

Parliamentary inviolability

Article 59 of the Constitution, whereby Members of the Chamber of Representatives and the Senate enjoy inviolability in criminal matters, has been amended as a result of the constitutional revision of 28 February 1997[8]. The former Article 59, first paragraph, of the Constitution stipulated that 'No Member of either of the two Houses may, during the session, be prosecuted or arrested as a punishment save with the permission of the House to which he belongs, except in the case of *flagrante delicto*.' Consequently, when a Member of Parliament had committed a criminal offence or was suspected of so doing, no procedure connected with the related inquiry could be carried out unless the House to which the Member belonged had first given its permission. The constitutional revision of 28 February 1997 was intended primarily to ensure that certain routine inquiry procedures could be completed without the authorisation of the House concerned.

The present text of Article 59, first paragraph, reads as follows:

'Except in the case of a flagrant offence, no Member of any Chamber may, during a session, be directly remanded or summoned before a court or tribunal or arrested in the pursuit of criminal proceedings except with the authorisation of the Chamber of which he is a member.'

The House is therefore now required to give its permission in two cases only, namely when a Member is to be directly remanded or summoned before a court or tribunal or when he is to be arrested.

5 See for instance Doc. Parl. Chambre 1992-1993, 781/1, p. 6: when a Member freely expresses an opinion at a press conference, he has not acted in the performance of his duties. Article 58 consequently cannot be invoked. See also Annales, Chambre, 1992-1993, 2 March 1993, p. 1636.

6 However, Members' or Senators' speeches reproduced in reports of parliamentary proceedings or any other document printed under the authority of the respective House fall within the purview of Article 58 of the Constitution. Non-liability similarly applies when a Member of either House merely refers to a speech. See H. VUYE, loc. cit., 14.

7 See Rule 51 ff. of the Rules of Procedure of the Chamber of Representatives and Rule 52 of the Rules of Procedure of the Senate.

8 *Moniteur belge*, 1 March 1997, pp. 4308-4309.

The terms 'directly remanded or summoned before a court or tribunal' relate to the act of bringing a case before the trial court, following either direct committal by the public prosecutor's department[9] or committal for trial by the investigating court (court in chambers or the Indictments Chamber) at the end of the preliminary investigation.

The word 'arrested' used in Article 59, first paragraph, of the Constitution denotes only arrest under a court order (or in connection with a criminal matter), a concept covering both arrests to enforce a judgment or order[10] and the arrest of a person suspected of committing an offence, while the inquiry is taking place. It does not mean administrative arrest, which the police may make to perform its crime prevention tasks and maintain law and order (Article 31 of the Police Duties Act of 5 August 1992). Police-officers are thus empowered to detain a Member of Parliament for twelve hours if he causes a breach of the peace on a public highway, obstructs the course of justice, or, because he is drunk, constitutes a danger to himself or others. When a Member of Parliament has been detained in an administrative arrest, the President of the House to which he belongs and the Minister of the Interior are informed. In theory, the House could call for his immediate release under Article 59, sixth paragraph, of the Constitution.

The authorisation given by a House for one of its Members to be committed for trial, summoned before a court or tribunal, or arrested has relative force. It waives inviolability only in respect of the facts specifically mentioned in the waiver request. A Member of Parliament brought before a court cannot be called upon to answer complaints other than those referred to in the authorisation unless a fresh decision has been obtained from the House[11]. The House dealing with a request is entitled to approve it only in part by agreeing to waive inviolability in respect of some actions, but not others. Furthermore, it could give permission for a Member to be directly committed for trial or summoned before a court or tribunal but refuse to authorise his arrest.

As a result of the constitutional revision of 28 February 1997, most stages of criminal procedure before committal for trial can now be completed without the prior authorisation of the House to which a Member belongs. However, the body responsible for the revision has made certain procedural measures subject to special guarantees.

In the first place, only the officers of the public prosecutor's department and its competent agents may bring proceedings against a Member of Parliament[12]. By virtue of Article 59, fourth paragraph, of the Constitution, no proceedings can be instituted on the initiative of private individuals, be it by associating in an action with the public prosecutor or by means of a private prosecution.

Secondly, restraining measures requiring the intervention of a magistrate[13] can be ordered only by the First President of the Court of Appeal on application by the examining magistrate. Decisions to

9 Under Article 59, fourth paragraph, of the Constitution private individuals are debarred from instituting criminal proceedings against Members of Parliament.

10 G. GOEDERTIER, De nieuwe regeling van de [parlementaire] onschendbaarheid, *Chroniques de droit public*, 1998, No 4, 432.

11 M. VERDUSSEN, Une inviolabilité parlementaire tempérée, *Journal des Tribunaux*, 1997, 676. However, a decision to waive parliamentary immunity relates to the facts of the case as a whole and does not depend on the legal classification of those facts: Doc. Parl., Sénat, 1994-1995, 1269, 5.

12 Article 59, fourth paragraph, of the Constitution states that 'During the session, only the officers of the public prosecutor's department and its competent agents may institute a prosecution against a member of any Chamber'. The text stipulates merely that the authority concerned is the only one empowered to **start** criminal proceedings. It does not debar a private party from associating in an action brought by the proper authority (Doc. Parl. Sénat, 1996-1997, 1-363/2, p. 2).

13 According to the accepted definition, the term 'restraining measures' denotes measures for which - other than in cases of *flagrante delicto* - a court order is required by law and which serve to curtail the personal rights and freedoms of the party concerned without his or her consent.

that effect are notified to the President of the Chamber concerned (Article 59, second paragraph, of the Constitution), who must also be present when searches or seizures are made (Article 59, third paragraph).

Thirdly, a Member of Parliament may request at any stage of an investigation that the House suspend the proceedings instituted against him. To grant such a request, the House has to act by a majority of two thirds of the votes cast (Article 59, fifth paragraph, of the Constitution).

The rules governing parliamentary immunity do not apply in the case of *flagrante delicto*. The law applicable in that instance is the ordinary law of criminal procedure relating to prosecutions proper and arrest. The term *flagrante delicto* refers to any crime, offence, or breach of the law in the act of being committed or which has just been committed (Article 41, first paragraph, of the Criminal Investigation Code); the description applies only if the interval between the moment when the offence was committed and the investigative measures is no longer than the time physically necessary to complete the latter measures. In principle, criminal proceedings should be instituted no later than 24 hours after the offence was committed.

Parliamentary inviolability applies to all infringements, and no distinction is made between crimes, offences, and breaches of the law. For the purposes of inviolability, there is no difference between offences committed in the exercise of parliamentary office and those which are not: both categories are covered. However, the inviolability arrangements apply only to criminal matters. Notwithstanding his parliamentary immunity, a Member of Parliament could be prosecuted for criminal acts in a civil court.

III. The duration of parliamentary immunity

Non-liability

The non-liability applying to Members of Parliament is permanent: it continues after the end of their term of office and is not limited in time. The immunity in question thus constitutes real immunity: a Member of Parliament can never be prosecuted on account of opinions expressed and votes cast when carrying out his duties.

Parliamentary inviolability

Elected Members of Parliament are covered by parliamentary inviolability from the moment of their election, in other words before they have even taken the oath, although the protection becomes void if their election is declared invalid.

It covers the following:

- warrants to bring a suspect or accused person before an examining magistrate or public prosecutor in order to be questioned;
- search warrants;
- seizure to enforce a search warrant without the consent of the party concerned, including breaches of the confidentiality of correspondence;
- logging of telephone calls without the consent of the party concerned;
- telephone tapping;
- body searches (Doc. Parl. Sénat, 1996-1997, 1-363/3, p. 2).

The following therefore do not constitute restraining measures: voluntary questioning and face-to-face meetings with witnesses, searches carried out with the consent of the party concerned and seizures made in connection with such searches, or appointment of an expert.

The rules governing parliamentary immunity apply only while Parliament is in session. Once a session has closed, and until the start of the next session, protection ceases to operate, and the ordinary law of criminal procedure has to be observed.

Strictly speaking, therefore, Article 59 of the Constitution does not lay down immunity arrangements, but rather allows proceedings instituted against Members of Parliament to be suspended.

In practice, the King does not declare a session closed until a day or two before the opening of the next session, that is to say the second Tuesday in October, even though Parliament may have already been in its summer recess for several weeks. Because of this custom, Members of Parliament can in fact continue to be protected for the whole of a parliamentary term, barring the one or two days between sessions. The space of time between one parliamentary term and the next must not exceed two months (Article 46, fifth paragraph, of the Constitution). During those periods the courts can consequently take real action.

IV. The procedure for waiving parliamentary immunity

Non-liability

Non-liability cannot be waived under any circumstances, and Members of Parliament are likewise not free to set it aside of their own volition.

Parliamentary inviolability

Requests to waive parliamentary immunity are made by the Principal Crown Prosecutor attached to the court of appeal having jurisdiction, following representations by the Minister of Justice. When a formal request for waiver of immunity is submitted, the President of the House called upon to deal with it informs the plenary, without naming the Member concerned or specifying the acts that he is alleged to have committed, and proposes that the request be referred to committee.

In the Chamber of Representatives, a seven-member special committee, appointed by the plenary on a proposal from the President, has the task of considering requests for authorisation to proceed against a Member or to suspend proceedings already under way. The committee may decide to hear the Member concerned. The Member **must** be heard if he so requests. He may be assisted by a fellow Member or a legal adviser.

In the Senate, although there is no reason why a special committee should not be set up (Rule 62 of the Senate's Rules of Procedure), responsibility has traditionally rested with the Justice Committee.

When a request for authorisation to proceed was considered under the old system, the sole object of the exercise, in principle, was firstly to ascertain whether the request was admissible, that is to say truthful and genuine, and in addition, assuming that it satisfied those conditions, to determine whether authorisation to proceed should nevertheless be refused, either because the actions in question were of no consequence or of a political nature, or because the evidence of guilt was plainly insufficient, or because the normal conduct of parliamentary business might have been disrupted. The committee was not supposed to consider the substance of the case. Owing to the revision of Article 59 of the Constitution, the proper conduct of parliamentary business is likely to become a

more important criterion. Since the House gives its authorisation at a later stage of the investigation, the judicial authorities have greater opportunities to gather real evidence. A House is therefore less likely to decide that the facts of a case or the evidence are immaterial[14].

After considering a request, the committee submits a generally very brief report to the plenary, the conclusions of which serve to answer the question whether the House should give its permission for the incriminated Member to be sent for trial, summoned directly before a court or tribunal, and/or arrested, and, if steps are to be taken, under what conditions they should be carried out.

The plenary decides by voting on the committee proposals. Votes on requests for authorisation to proceed or to suspend proceedings already instituted are cast by sitting and standing unless a given number of Members (eight in the Chamber of Representatives and five in the Senate) ask for a vote by roll-call.

The customary practice of the Chamber of Representatives is to take a decision by unanimous assent on the basis of the proposal from the appropriate committee, following a debate conducted in accordance with Rule 93(3) of the Rules of Procedure[15]. The Senate, in plenary sitting, decides by taking a vote, traditionally without any debate, on the proposals of the appropriate committee, which are almost always endorsed unanimously.

V. Parliamentary practice

Chamber of Representatives

Since the 1992-1993 ordinary session the special committee has considered eight cases. In every case authorisation to proceed was granted in full or in part. All of the requests were dealt with under the old procedure.

Senate

On six occasions since 1 January 1993 the Senate has been called upon to rule on requests to waive the parliamentary immunity of one of its members. The requests predated the revision of Article 59 of the Constitution completed on 28 February 1997. In two cases the Senate decided to waive the parliamentary immunity of the Senator concerned on the understanding that the waiver would entail authorisation to take any necessary procedural steps other than the issue of an arrest warrant and the final submissions of the prosecution[16]. In a third case it took the same decision subject to the condition that the judicial procedure would be conducted in such a way that the Senator in question would not be prevented from discharging his parliamentary office[17]. In every other case it rejected the request for waiver of parliamentary immunity.

In the period under review the Senate also had to consider two requests to suspend the proceedings instituted against a Senator. It decided to request suspension of the proceedings in one instance and refrained from making such a request in the other case on the understanding that the judicial

14 G. GOEDERTIER, loc. cit., 436, note 78.

15 Under Rule 93(3) of the Chamber's Rules of Procedure, the only persons entitled to speak in plenary debates on requests for authorisation to proceed against a member of the Chamber are the committee rapporteur, the Member in question or another Member representing him, a Member speaking in support of waiver of immunity, and a Member speaking against it.

16 Doc. Parl., Sénat, 1993-1994, 958 and 959.

17 Doc. Parl., Sénat, 1993-1994, 982.

procedure would be conducted in such a way that it would not interfere with the exercise of parliamentary office[18].

The fact that the new rules governing parliamentary inviolability permit ordinary procedural steps to be taken against Members without the prior authorisation of the House concerned will probably serve to reduce the number of requests for inviolability to be waived. To date no request for waiver of parliamentary immunity has been submitted under the new Article 59 of the Constitution.

18 Doc. Parl., Sénat, 1993-1994, 981.

BELGIUM
Relevant legal provisions

Constitution

Article 58

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 59

Except in the case of a flagrant offence, no member of any Chamber may, during a session, be directly remanded or summoned before a court or tribunal or arrested in the pursuit of criminal proceedings except with the authorisation of the Chamber of which he is a member.

Except in the case of a flagrant offence, restraining measures requiring the intervention of a magistrate may not be instituted against a member of any Chamber for the duration of a session in the pursuit of criminal proceedings except by the First President of the Court of Appeal on application by the examining magistrate. Any decision to that effect shall be notified to the President of the Chamber concerned.

All searches or seizures executed by virtue of the preceding paragraph may be performed only in the presence of the President of the Chamber concerned or of a Member appointed by him.

During the session, only the officers of the public prosecutor's department and its competent agents may institute a prosecution against a member of any Chamber.

The member of any Chamber in question may, at any stage in an investigation in the pursuit of criminal proceedings, request that the Chamber of which he is a member suspend prosecution for the duration of the session. The Chamber in question must grant that request if supported by a majority of two thirds of the votes cast.

Detention of a member of any Chamber or his prosecution before a court or tribunal shall be suspended for the duration of the session if the Chamber of which he is a member so requests.

Rules of Procedure of the Chamber of Representatives

Rule 93

1. A seven-member committee shall be set up, pursuant to Rules 11, 12 and 15, to examine requests for authorisation 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).

2. The committee may hear the Member concerned. The Member must be heard if he so requests. He may be assisted by a fellow Member or a legal adviser.
3. 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.

Rules of Procedure of the Senate

Owing to the uncertainty surrounding the proposals to reform parliamentary immunity, it was thought preferable, when the Senate's Rules of Procedure as a whole were revised in April 1995, to shelve the question whether specific provisions on the waiver of parliamentary inviolability should be inserted in the new Rules (on this point see the report by Mr Erdman, Doc. parl., Sénat, 1994-1995, 1373-1, pp. 6-7).

DENMARK

I. The legal basis of parliamentary immunity

The parliamentary immunity of Members of the Folketing from imprisonment, prosecution and responsibility for statements made in the Folketing is laid down in section 57 of the Danish Constitution. These rules are supplemented by provisions in the standing orders of the Folketing where section 17(2), in conjunction with section 25, lays down provisions governing the procedure for waiving parliamentary immunity.

II. The scope of parliamentary immunity

Section 57, first sentence, protection from imprisonment and prosecution

This provision states that 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*. The purpose of this provision is to provide Members with unimpeded access to participation in parliamentary proceedings and to ensure their independence from the government. The provision applies only to public prosecution and imprisonment and presupposes that the Member in question has not been caught in *flagrante delicto*.

The term 'prosecution' covers only public criminal prosecution and protection does not therefore extend to investigation, interrogation and fines. The same applies to civil actions and criminal cases resulting from private prosecutions. Where the prosecution was instituted before the person in question became a Member of the Folketing the case may proceed to judgement.

The term 'imprisonment of any kind' covers any form of loss of liberty unless it involves coercive measures such as those for remedial purposes (commitment to a mental hospital).

The term 'caught in *flagrante delicto*' covers cases where a person is encountered during or in direct connection with the commission of a punishable offence.

The effect of section 57, first sentence, is that a Member of the Folketing cannot without its consent be prosecuted or imprisoned. This privilege does not apply in the following three circumstances: (1) the Folketing grants its consent to such action, (2) the Member is caught in *flagrante delicto*, (3) membership has ceased.

Section 57, second sentence, protection of freedom of speech

The second sentence of section 57 of the Constitution states that no Member of the Folketing can without its consent be held accountable outside the Folketing for his statements in the Folketing. The purpose of this provision is to ensure that Members of the Folketing may speak freely on any matter without fear of any subsequent liability. This protection also applies after the person in question has ceased to be a Member of the Folketing.

The term 'statements' must be assumed to cover any kind of expression of opinion with the result that protection extends both to verbal utterances and to symbolic actions. The provision protects not only oral statements by Members during debates but also their written contributions in proposals and reports, etc.

There is a firm assumption that the term 'in the Folketing' is not to be construed as a purely geographical criterion but that protection covers parliamentary freedom of speech in connection with the performance of the duties of a Member of the Folketing. Thus it covers statements made by Members in committees and commissions dealing with parliamentary matters as well as statements concerning parliamentary matters made during meetings of parliamentary party groups. Conversely, it is assumed that it does not cover statements made at political meetings, to the press or on radio or television.

If a Member of the Folketing repeats outside the House what he has said in the House, he becomes liable under the usual rules but only to the extent that he has engaged in an activity demonstrating his desire to secure a wider audience for his statements.

The term 'be held accountable' covers any kind of criminal prosecution and civil action.

The effect of the second sentence of section 57 of the Constitution is that a Member of the Folketing cannot without its consent be held accountable outside the Folketing. This privilege lapses where the Folketing, on request, grants its consent to legal proceedings. Where the Folketing withholds its consent, any form of legal action is excluded whether with a view to conviction or compensation by private or public proceedings or prosecution.

The protection provided for in the second sentence of section 57 of the Constitution covers only liability that can be invoked outside the Folketing. Under section 29(2) of the standing orders of the Folketing the President may, where he considers a Member's statements to be improper, call that person to order and, where the Member does not comply with the President's request, the President may deprive the Member in question of the right to speak. In addition, the Standing Orders Committee may decide that a Member who has been called to order is to be excluded from meetings of the Folketing for up to 14 sitting days. Under section 29(3) of standing orders, the measures referred to in paragraph 2 apply analogously where the Speaker considers a Member's written statements in proposals and reports, etc. to be improper and where a Member otherwise commits a serious breach of order.

III. Duration of parliamentary immunity

Freedom from accountability for statements made in the Folketing also applies after a person has ceased to be a member of the Folketing. Although this is not explicitly stated in section 57(2) of the Constitution, it follows from the purpose of this provision and it has always been accepted. As far as other actions are concerned, a member of the Folketing only enjoys immunity for as long as he or she is a member of the Folketing.

IV. Procedure for the waiver of parliamentary immunity

Where the prosecuting authorities wish to institute criminal proceedings against a Member of the Folketing, it is for the chief public prosecutor to decide whether the request for waiver of immunity is to be forwarded. Where the chief public prosecutor considers the request to be justified, it is forwarded to the Ministry of Justice which ensures that the necessary further action is taken should it be decided to proceed with the case.

As regards cases relating to liability for statements, see the second sentence of section 57 of the Constitution, which unlike the first sentence of that provision covers both public and civil actions, the initiative in civil cases must be taken by the private individual instituting the proceedings.

A request for the waiver of parliamentary immunity must be made in accordance with section 54 of the Constitution and section 25 of standing orders in the form of a petition. In practice, petitions for the waiver of immunity are addressed to the President of the Folketing who refers them to the Standing Orders Committee. The committee submits a report and recommendation concerning the Folketing's consent pursuant to section 57 of the Constitution relating to the Member in question since, under this provision, the Folketing is empowered to decide whether a Member's immunity should be waived. The committee's recommendation is given a single reading, see section 17(2) of standing orders. The vote on the recommendation is held in accordance with the usual rules in section 33(1).

Since immunity can be waived only on a resolution of the Folketing, the Member in question may not on his own initiative waive his immunity.

V. Parliamentary practice

In the last 15 years the Folketing has taken a position on the waiving of immunity pursuant to section 57(1) of the Constitution on a total of four occasions: in 1987/88, the first session of 1992/93, 1994/95 and 1998/99. Consent was granted in each case.

A request for consent to call a Member to account for statements in the Folketing, under the second sentence of section 57 of the Constitution, has been applied for no more than two or three times since adoption of the present Constitution in 1953 but consent was not granted.

The Folketing follows the practice that consent is always granted for criminal prosecution, under the first sentence of section 57 of the Constitution, while it is practically speaking never granted for an application to hold a Member accountable for statements in the House under the second sentence of that same provision.

DENMARK
Relevant legal provisions

The Constitution

Section 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.

Standing Orders of the Folketing

Section 17(2)

Recommendations made by committees concerning petitions, including the petitions for consent referred to in section 57 of the Constitution (see section 25) shall be read once, and the rules governing time-limits on speeches on the second reading of Bills shall apply. The same rules shall apply to recommendations made in a report from the Committee of Scrutineers (section 8(13)). Appointment of the Ombudsman of the Folketing (see section 7(2)(xviii)) shall be made without any debate at a sitting to be held not earlier than two days after the distribution of the recommendation on his appointment submitted by the Legal Affairs Committee.

Section 25

Petitions may be submitted to the Folketing only through one of its Members (the Constitution, section 54). Petitions include applications, addresses presented to the Folketing, complaints and similar communications from persons who are not Members of the Folketing. Any petition shall be sent to the committee to which the petitioner requests it to be referred. If such request has not been made, the President shall decide whether the petition is to be referred to a standing or a special committee or left for perusal by the Members in the reading room of the Folketing. *However, petitions for the Folketing's consent under the provisions of section 57 of the Constitution Act shall always be referred to the Standing Orders Committee* (see section 17(2)). Petitions relating to elections shall be referred to the Committee of Scrutineers (however, see section 1(3)), and petitions concerning the Ombudsman shall be referred to the Legal Affairs Committee.

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. firstly, non-liability, which protects Members against prosecution on the grounds of any oral or written statements made and of votes cast in the Bundestag or in its committees, and, secondly, immunity in the narrower sense, on the basis of which a criminal prosecution brought against a Member, arrest or any other form of restriction of the personal freedom of a Member cannot be executed without the authorisation of the Bundestag.

Rule 107 of the Rules of Procedure of the Bundestag, in the version of 2 July 1980, as most recently amended on 12 February 1998, lays down general procedural rules for the processing of matters relating to immunity. This rule refers 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 appropriate committee for the processing of matters relating to immunity. Both parts of the annex are adopted by the Bundestag or by the Committee on Immunities at the beginning of each parliamentary term.

The situation described above relates only to Members of the Bundestag. Members of the Bundesrat are Members of the Land governments, which appoint them and remove them from office. In this capacity, they do not enjoy any parliamentary immunity. Nevertheless, in specific cases they may enjoy immunity as Members of Land parliaments.

II. The scope of parliamentary immunity

Where parliamentary non-liability is applicable, Members enjoy complete protection from state-imposed sanctions in respect of their votes and statements in the House or in committees of the Bundestag. This includes measures under criminal and disciplinary law, as well as measures concerned with civil rights and actions involving civil law (the latter including in particular injunction applications and actions for compensation).

As regards criminal law, a personal ground of exemption from punishment exists in the sense of an absolute prohibition upon the initiation and prosecution of criminal proceedings and the execution of a sentence. Only the liability to prosecution and not the unlawfulness of the act or the guilt of the Member is thereby excluded.

By virtue of his non-liability, the Member may not 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 in other than Bundestag publications are not subject to the ground of exemption from punishment under non-liability.

Nor is a Member protected by non-liability if he commits defamation within the meaning of the German Penal Code. Accordingly, a Member who, against his better judgment, asserts or

disseminates with respect to another Member an untrue circumstance which is liable to belittle the latter, disparage him in public opinion or jeopardise his standing, may be prosecuted under criminal law if the required authorisation 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 freedom of a Member. In such cases, the authorisation of the Bundestag is required if state authorities wish to call the Member concerned to account. The authorisation of the Bundestag is not required where he is apprehended in the act of committing a punishable offence or in the course of the following day. Where parliamentary immunity is applicable, the Member 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. Unlike non-liability, immunity in the strict sense of the word does not prohibit prosecution, it simply makes the authorisation of the Bundestag a precondition.

At the beginning of each new parliamentary term, the Bundestag approves, in the aforementioned decision pursuant 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 authorisation to implement the criminal proceedings (i.e. bring a charge before the competent court).

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

Members have 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 freedom of the Member, does, however, require the authorisation of the Bundestag.

In addition to criminal prosecution, any other form of restriction of the personal freedom of the Member of Parliament by state authorities is also prohibited.

III. The duration of parliamentary immunity

Non-liability commences upon the acceptance of the mandate by the Member but no earlier than the date of constitution of the Bundestag; it continues indefinitely.

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 Member. It thus expires no later than the end of the parliamentary term. If the Member is re-elected, the prosecuting authorities must reapply to the Bundestag for authorisation under immunity law.

IV. The 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 parliamentary 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 is to be notified before the proceedings are initiated; where the Member of the Bundestag is not so notified, the President is to be advised of the fact and the reasons therefor. The right of the Bundestag to demand the suspension of proceedings (Article 46(4) of the Basic Law) remains unaffected.

The requests from the public prosecutor's officers and courts are forwarded 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 authorisation will be given to prosecute or restrict the personal freedom 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 authorisation of the Bundestag. To simplify matters, the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure is instructed to take a preliminary decision as to authorisation to execute; in the case of sentences of imprisonment, however, this course of action is taken only where a sentence of not more 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.

A simplified procedure is also laid down with respect to cases involving traffic offences and to petty offences.

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.

V. Parliamentary practice

The Bundestag in principle approves the implementation of criminal prosecutions against Members. Preliminary proceedings are generally approved at the beginning of the parliamentary term. The bringing of charges before courts requires the authorisation 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 what are referred to as political insults. Political insults are defamatory acts which the Member

commits in connection with the performance of his duties. In the case of political insults, it is necessary to secure the authorisation of the Bundestag in each individual case, even for the opening of preliminary proceedings. However, according to the practice of the Bundestag, authorisation for a criminal prosecution is not granted in such cases.

The legal concept of 'fumus persecutionis' is unknown in German immunity law. However, there are some indications that this legal concept is gaining ground in relation to what we shall call 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 Members 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 Members but as the prerogative of Parliament in its entirety; consequently, interference with the functioning and reputation of Parliament by other state authorities are to be prevented. Authorisation for the implementation of criminal proceedings will be granted even where the reputation of an individual Member of Parliament might thereby be diminished.

When examining immunity cases, the Bundestag does not undertake an appraisal of the evidence. However, it does examine the conclusiveness of the case presented by the prosecuting authorities. It gives authorisation only where the competent prosecuting authority unmistakably proclaims its desire to bring a charge; the immunity of a Member is not waived merely as a precautionary measure, just in case a prosecuting authority might at an early stage decide that a charge is required.

The following table gives a statistical survey of the immunity cases derived from the 8th to the 13th parliamentary terms.

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

GERMANY

ANNEX 1

Situation as at 18 January 1999

Immunity cases since the 8th parliamentary term

	8th parl. term 1976-80	9th parl. term 1980-83	10th parl. term 1983-87	11th parl. term 1987-90	12th parl. term 1990-94	13th parl. term 1994-98
Immunity cases (total)	26	11	63	43	13	22
- approved	17	5	60	37	12	19
- not approved	8	4	3	4	1	2
- not processed or discontinued	1	2	0	2	-	1
Offences involving statements (Sections 185 ff. of the Penal Code	11	5	7	7	2	2
- approved	2	1	4	3	1	-
- not approved	8	4	3	4	1	2
- not processed	1	0	0	0	-	-
Traffic offences	10	2	4	5	2	2
- approved	10	2	4	5	2	2
General criminal offences	5	2	47	27	6	11
- approved	5	2	47	27	6	11
Disciplinary proceedings (proceedings before tribunals)	0	0	3	-	-	2
- approved	0	0	3	-	-	2
Execution of a sentence	0	0	0	-	-	-
Detention to compel the giving of the oath of disclosure	0	1	0	1	-	1
- unfounded	0	1	0	1	-	1
Other restrictions of personal liberty (detention before trial, enforced appearance in court)	0	0	0	-	-	-
Examination of witnesses	0	1	0	-	3	1
- approved	0	0	0	-	3	1
- unfounded	0	1	0	-	-	-
Other cases	0	0	2	3	-	3
- approved	0	0	2	2	-	3
- unfounded				1		-
Number of members involved	25	12	63	32	12	15

GERMANY
Relevant legal provisions

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 German 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 concerning 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 to the Rules of Procedure of the German Bundestag

Decision of the German Bundestag

relating to the waiver of immunity of Members of the Bundestag[19]

1. The Bundestag shall grant permission, until the end of this parliamentary term, for preliminary investigations to be conducted against Members of the Bundestag for criminal offences, with the exception of insulting statements of a political nature (Sections 185, 186, and 187a, 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[20].

   [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(4) of the Basic Law) 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 Offences 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 Offences Act),

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

   (d) the continuation of preliminary investigations in respect of which the Bundestag, during the preceding parliamentary term, requested the suspension of investigations pursuant to Article 46(4) of the Basic Law)[21]

3. To simplify procedure, the Committee on Electoral Scrutiny, Immunities, and the Rules of Procedure shall be instructed to take a preliminary decision on authorisation in the cases specified in paragraph 2 relating to traffic offences.

19 This decision is adopted by the German Bundestag at the beginning of each parliamentary term

20 As supplemented by the Decision of the German Bundestag of 16 June 1988; Communication of 28 June 1988 (German Official Gazette[DGB1] I, p. 1009.

21 As supplemented by the Decision of the German Bundestag of 12 February 1998; Communication of 11 March 1998 (German Official Gazette[DGB1] I, p. 428.

The same shall apply to criminal offences which, in the opinion of the Committee on Electoral Scrutiny, Immunities, and the Rules of Procedure, are to be regarded as petty offences.

Authorisation 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 a parliamentary term, criminal proceedings are to be continued against a Member of the Bundestag against whom the Bundestag already authorised criminal proceedings to be conducted in the previous parliamentary term, the necessary authorisation 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 Offences Act) shall require the authorisation of the Bundestag. To simplify procedure, the Committee on Electoral Scrutiny, Immunities, and the Rules of Procedure shall be instructed to take a preliminary decision on the authorisation 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 the Penal Code and Section 460 of the Code of Criminal Procedure), where none of the individual sentences imposed exceeds three months.

5. If authorisation has been granted for the execution of a search or seizure ordered in respect of a Member of the Bundestag, the President shall make such authorisation 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 authorisation for the execution of coercive measures has been granted[22].

6. The Committee on Electoral Scrutiny, Immunities, 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(4) of the Basic Law[23].

7. As regards preliminary decisions, the decisions taken by the Committee on Electoral Scrutiny, Immunities, 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.

22 As supplemented by the Decision of the German Bundestag of 3 December 1987; Communication of 9 December 1987 (German Official Gazette [BGBl] I, p. 2677).

23 As supplemented by the Decision of the German Bundestag of 3 December 1987; Communication of 9 December 1987 (German Official Gazette [BGBl] I, p. 2677).

Principles relating to immunities and cases of authorisation 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 authorisations under paragraph 2 of Section 90b and paragraph 4 of Section 194 of the Penal Code[24]

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 authorisation, for the duration of a parliamentary term, for 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 (Article 46(4) of the Basic Law) shall remain unaffected.

(b) The requests of the public prosecutor's officers and courts shall be forwarded 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 authorisation will be given to prosecute or restrict the personal freedom of a Member of the Bundestag or to take any other measure contemplated.

(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.

24 The principles according to paragraph 2 of Section 107 are determined by the Committee on Electoral Scrutiny, Immunities and Rules of Procedure, at the beginning of each parliamentary term.

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 designed to ascertain 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 authorisation 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 (non-liability). 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 inquiry 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 authorisation 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 authorisation of the Bundestag; otherwise this would amount to a restriction of personal freedom (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 authorisation granted for the duration of a parliamentary term to bring preliminary proceedings against Members of the Bundestag on account of punishable offences and authorisation to bring public suit on account of a punishable offence do not imply

authorisation 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 authorisation.

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

(d) Authorisation to issue such a warrant does not imply authorisation 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)

Authorisation 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 authorisation 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 authorisation to execute; in the case of sentences of imprisonment, however, it shall do so only where a sentence of not more than three months is imposed or, in the case of cumulation of sentences (Sections 53 and 55 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 authorisation 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

Authorisation 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 take 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 take a preliminary decision (paragraph 13).

13. Simplified procedure (preliminary decisions)

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

14. Need for authorisation in special cases

The authorisation 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 the Code of Civil Procedure).

As only the execution of a warrant of arrest constitutes a restriction of personal freedom within the meaning of Article 46(2) of the Basic Law and therefore requires the authorisation 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 authorisation 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 freedom 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 (Sections 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

When a Member of the Bundestag takes up office, all criminal proceedings pending as well as any arrest ordered, execution of a sentence of imprisonment or other restriction of personal freedom (cf. paragraph 14) shall be automatically suspended.

Where proceedings cannot be stayed, a decision shall be obtained from the Bundestag beforehand, unless authorisation 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. There shall be no requirement for such cases to be placed before the Bundestag in plenary session.

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

Authorisation to bring a criminal prosecution under Section 90b(2) of the Penal Code - anti-constitutional 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 forwarded by the public prosecutor's officers 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 authorisation to bring criminal proceedings under Section 90b(2) or Section 194(4) of the Penal Code shall be granted.

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

Authorisation to derogate 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 cross-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 are to be forwarded by the public prosecutor's officers and courts direct to the President of the Bundestag. Authorisation shall not be required where the date appointed for the cross-examination of the Member as a witness falls outside the weeks on which the Bundestag sits.

GREECE

I. The legal basis of parliamentary immunity

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

Rule 83 of the Rules of Procedure of the Chamber of Deputies sets out the procedure to be followed in cases of requests for the waiver of parliamentary immunity.

II. The 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 Member may not be subjected to any legal proceedings on the part of any judicial or other body or be subjected to any inspection on the part of private persons:

- 'opinion expressed while carrying out parliamentary duties' means the opinion expressed by a Member in a bill, 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 Member is required to express himself in his capacity as a Member of Parliament. Likewise, 'opinion' shall mean any opinion expressed within the framework of questions asked at a sitting of Parliament;

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

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

On the other hand, non-liability does not concern crimes committed in the performance of parliamentary duties which bear no relation to the expression of an opinion or of a vote of the Member or when such expression is totally unrelated to the performance 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 Member to carry out his mandate under the best possible conditions by ensuring that he has complete freedom of speech and is free to perform his duties without any extra-parliamentary influence. It also aims to preserve Members' independence in performing 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 laid down in Article 61(2) of the Constitution: legal proceedings may be brought against a Member of Parliament, subject to

authorisation by the Chamber, where he is guilty of slanderous defamation. The Appeal Court is competent to judge the case. In this instance, proceedings may not be initiated until authorisation has been given by the Chamber, which must take a decision 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 authorisation, 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 Member on the same grounds, even after the end of the parliamentary term.

Moreover, Article 61(3) institutes the right of Members to refuse to testify (what it has been agreed to call professional secrecy) and aims, on the one hand, to guarantee in law the freedom for Members to take 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 confide to them various items of information. The right of refusal to testify relates to information received or given by Members while performing their duties and to the persons who have confided information to them or to whom they themselves have given information.

Article 62 of the Constitution stipulates that, throughout the parliamentary term, no Member may be prosecuted, arrested, detained or in any other way deprived of his personal freedom, without the authorisation of the Chamber, except in the case of his being caught in flagrante delicto. 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 Members of the new Chamber.

Article 62 thus establishes, for the duration of the parliamentary term, what it has been agreed to call the inviolability of Members, 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 Member's independence and freedom to perform his duties.

This special protection covers crimes, as well as offences and infringements, whether the deeds of which Members 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 Member is involved, nor does it constitute an obstacle to the arrest, detention, etc. of any accomplices (persons who are not Members).

Article 62(2) of the Constitution prohibits only the bringing of criminal proceedings against a Member. It does not prohibit his cross-examination as a witness. It goes without saying, however, that it is forbidden to bring the Member 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 Member, even in the absence of authorisation from the Chamber. Article 54 of the Code of Criminal Procedure also supports this conclusion.

The condition of lawfulness of the inquiry is that it does not affect the Member's person. By way of example, the Member's person may be deemed to be affected when a charge is made public, a summons is issued or the Member is forced to appear. Nor is it forbidden to carry out a search at the Member's home without the prior authorisation 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 Member, since immunity provides special protection of the Member'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 Member personally, for debts, during the parliamentary term without the authorisation of the Chamber.

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

After the dissolution of the Chamber and before the proclamation of the Members of the new Chamber, no legal proceedings may be brought against any Member of the dissolved Chamber for a political crime (see Section III).

III. The duration of parliamentary immunity

Non-liability comes into force after the taking of the oath and is indefinite; in other words it extends beyond the parliamentary term[25].

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

In the case of requests for authorisation for proceedings to be brought for slanderous defamation, after expiry of the period provided for in Article 61(2) of the Constitution, or in the event of refusal by the Chamber to grant authorisation, proceedings may no longer be brought against the Member on the same grounds, even after the end of the parliamentary term.

The special protection enjoyed by Members 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 the dissolution of the Chamber or after expiry of the parliamentary term.

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

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

25 Non-liability is not applicable to members of the government. Anyone who combines the duties of both a minister and a Member is covered by non-liability only for opinions expressed in his capacity as a Member of Parliament, not as a minister.

All criminal proceedings brought against a Member are suspended for the duration of the parliamentary term, and those for which the Assembly has refused its authorisation resume effect as from the end of the parliamentary term. Any sentences passed against Members before their appointment are therefore enforced.

The provision laid down in the second sentence of Article 62(1) introduces an exception to the rule whereby 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 Member between the dissolution of the Chamber and the proclamation of the Members of the new Chamber. It also concerns Members who stand for re-election to the new Chamber. During the period between the expiry of the parliamentary term or, at all events, between the dissolution of the Chamber and the proclamation by the Court of First Instance of the Members of the new Chamber, the former Members 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 period.

IV. The procedure for waiving parliamentary immunity

Requests for authorisation to initiate proceedings against a Member are forwarded 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 appropriate parliamentary committee, namely the Committee on Public Administration, Law and Order and Justice, which examines them and determines whether or not authorisation should be granted, within the deadline laid down by the President of the Chamber. The said committee is obliged to hold a hearing of the Member concerned if the latter has applied therefor to the chairman of the committee and may ask the government to provide it with such documents as it may deem necessary before delivering its opinion. The government may only refuse to supply such documents on grounds connected with national defence or security.

Once the appropriate committee has delivered its opinion, the requests for proceedings are entered on the agenda of the plenary session of the Chamber[26], during which a debate takes place, followed by a vote by secret ballot.

Pursuant to Article 62 of the Constitution, authorisation is deemed to have been definitely refused if the Chamber fails to deliver an opinion in respect thereof within three months of the forwarding of the request for authorisation to initiate proceedings by the Public Prosecutor to the President of the Chamber. The three-month deadline is suspended during a parliamentary recess.

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

V. Parliamentary practice

From January 1993 to February 1999, 124 requests for waiver of parliamentary immunity were submitted to the Chamber. The Chamber approved waiver of immunity in only two cases.

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

The prevailing rule in Greek parliamentary practice - and this applies equally to the period prior to that discussed here[27] - is that the Chamber does not waive immunity. This practice is valid for all offences, including insult, defamation or slanderous defamation.

The non-liability of a Member covers, out of all his political activities, only opinions expressed or votes cast by him in the performance of his parliamentary duties. This is a mandatory provision which is explicitly laid down in the Greek Constitution (Article 61(1)). Parliamentary practice, however - which consists, as we saw in the last section, of not waiving the immunity of Members - has not enabled specific criteria to be ascertained with a view to differentiating, in borderline cases, between the parliamentary activities and extra-parliamentary activities of the representatives of the nation.

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

When the Chamber decides on whether or not to waive a Member's immunity, it is acting, as it were, in a 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 the parliamentary institutions and, consequently, it simply looks at whether the future proceedings have political ends, at what point it is justified in refusing authorisation to waive immunity or, conversely, at what point it must grant the authorisation in question.

27 From 1974 to December 1992, 347 requests for waiver of parliamentary immunity were examined by the Chamber of Deputies. The latter approved only three of those requests. Parliamentary immunity was waived, in the first case, for the successive offence of illegal and continued export of foreign currencies (105th session, dated 5 April 1984) and, in the second, for the offence of diversion of an extremely valuable object, committed during the performance of duties (28th session, dated 14 June 1990). Information on the third case was not supplied.

GREECE
Relevant legal provisions

Constitution

Article 61

1. Members shall not be subjected to legal proceedings, nor questioned in any way whatsoever, on the grounds of opinions expressed or votes cast by them in the performance of their parliamentary duties.

2. According to law, legal proceedings may be brought against Members only for slanderous defamation and after authorisation of the Chamber. The Appeal Court is competent to judge the case. Authorisation shall be deemed to have been definitely refused if the Chamber fails to deliver 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 authorisation, or expiry of the abovementioned period, the offending act may not be made the subject of a new complaint.

   This paragraph shall be applicable only with effect from the next parliamentary term.

3. Members shall not be obliged to testify on information received or given by them in the performance of their duties, nor on the persons who have confided information to them or on those to whom they themselves have given such information.

Article 62

During the parliamentary term, no Member may be subjected to legal proceedings, arrested, detained or in any other way deprived of his personal freedom, without the authorisation 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 proclamation of the Members of the new Chamber.

Authorisation shall be deemed to have been definitely refused if the Chamber fails to deliver an opinion in respect thereof within three months of the forwarding of the request for proceedings by the Public Prosecutor to the President of the Chamber.

The three-month time-limit shall be suspended during a parliamentary recess.

No authorisation shall be required in the event of a Member being caught in flagrante delicto.

Rules of Procedure of the Chamber of Deputies

Rule 83

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

2. The Chamber shall be 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 shall examine the requests, and shall deliver an opinion on whether or not authorisation should be granted within the time-limits laid down by the President of the Chamber in the document accompanying the request.

4. The committee shall be obliged to hold a hearing of the Member 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, where appropriate, ask the government to supply it with such documents as it shall deem necessary before delivering its opinion. The government may refuse to provide it with these documents only on grounds connected with national defence or security.

6. Requests for proceedings shall be entered on the agenda of the plenary session of the Chamber immediately after the appropriate committee has delivered its opinion. At all events, requests shall be entered on the agenda at least ten days before the expiry of the time-limits laid down in Article 61(2) and Article 62(1) of the Constitution.

7. The debate in the Chamber shall begin with the rapporteurs' speeches and relate to the opinion delivered by the committee concerned. If the latter fails to deliver its opinion within the time-limits laid down, the debate may concern only the events referred to in the request for waiver of immunity.

8. The vote as to whether or not the authorisations referred to in paragraph 1 should be granted shall be held by secret ballot.

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

SPAIN

I. The legal basis of parliamentary immunity

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 the case of *flagrante delicto* and may not be charged or be subject to legal proceedings without the prior authorisation 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. The 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.

The opinions concerned 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)[28].

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.

28 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.

According to a decision of the Constitutional Court of 18 January 1990[29] , the prior authorisation 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.

Immunity 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 Deputies or Senators is subject to the prior authorisation 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.

III. The 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).

IV. The procedure for waiving 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[30]) to the President of the Chamber in question. The prior authorisation 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[31], 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.

29 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).

30 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'.

31 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 authorisation for proceedings and the confirmation of the court judgment ordering the opening thereof, the Deputy has been remanded in custody, for the duration thereof.

V. Parliamentary practice

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 authorising proceedings when the deeds have been committed while carrying out a purely political function, when resorting to the free exercise of the right to criticise 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).

Between 1979 and January 1999 the Senate considered 38 requests to waive parliamentary immunity, of which 16 were rejected and 22 were approved[32].
During the first four sessions immunity was waived in cases involving violent resistance to arrest, insults to the Government or the Head of State, illegal detention, or crimes of violence. Since the fifth session it has invariably been waived.

Congress of Deputies

In the same period (from 1979 to January 1999) the Congress of Deputies considered 29 requests to waive parliamentary immunity, rejecting 11 and approving 18. Since the fifth session the Congress has likewise followed the practice of invariably granting requests[33].

The trend in the two Chambers has been as follows:

Session	Requests granted		Requests rejected	
	CONGRESS OF DEPUTIES	SENATE	CONGRESS OF DEPUTIES	SENATE
First (1979-1982)	1	3	3	4
Second (1982-1986)	6	2	3	1
Third (1986-1989)	2	2	4	8
Fourth (1989-1993)	5	4	1	3
Fifth (1993-1996)	2	5	-	-
Sixth (1996-Jan.1999)	2	6	-	-

Since 1993 there has been a tendency to grant requests irrespective of the category of crime and hence even when the acts in question may have been ordinary offences committed by Members of Parliament in the exercise of their public office or in connection with political activities. However, the committees and the Chambers have taken a fairly cautious approach when dealing with allegedly criminal utterances or written statements (except for those advocating violence or 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 1978 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.

32 First session (1979-1982): 7 requests; second session (1982-1986): 3 requests; third session (1986-1989): 10 requests; fourth session (1989-1993): 7 requests; fifth session (1993-1996): 5 requests; sixth session (1996-January 1999): 6 requests.

33 First session (1979-1982): 4 requests; second session (1982-1986): 9 requests; third session (1986-1989): 6 requests; fourth session (1989-1993): 6 requests; fifth session (1993-1996): 2 requests; sixth session (1996-January 1999): 2 requests.

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 the 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 authorisation to bring legal proceedings will be incorrect and will constitute an abuse of the constitutional role of immunity when the latter is used for 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 April 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 July1985: '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 January 1990: '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 authorisation 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'.

- STC 206/1992 of 27 November: immunity is consistent with the higher interest which demands that national representation should not be adversely affected or disrupted. This does not mean that the above-mentioned higher interest should take precedence in every case over due process of the law, since the seriousness and importance of the actions forming the subject of the charge and the circumstances in which they were committed likewise have to be taken into account. Under the Constitution the Chambers must determine for themselves whether charges or prosecution might lead to the manifest result of unduly interfering with the composition or running of the Chambers. A parliamentary resolution to that effect,

however, might entail external consequences because it could undermine the basic rights of other citizens. Given that eventuality, it is permissible under Article 42 of the L.O.T.C., in order to safeguard the above rights, to appeal to the Constitutional Court, which might be led to rule that the parliamentary resolution was in keeping with the purpose of immunity.

- STC 22/97 of 11 February: as regards its purpose and purely in procedural terms, the privilege of being tried only by the Supreme Court serves to complement and ultimately realise the privileges of inviolability and immunity, since all of the above privileges are intended to fulfil the same common aims of safeguarding the lawful representatives of the people from criminal proceedings seeking to restrict their freedom of conscience (inviolability) and prevent them, by wrongful and dishonest means, from taking part in parliamentary decision-making, thus shielding them from malicious or politically motivated accusations which, among other things, through the abuse of legal procedures, might blur the distinction between the spheres of political responsibility and criminal liability, the demarcation of which is one of the greatest achievements of the rule of law as a form of free, pluralistic organisation of collective life (immunity), or, in the final analysis, protecting the independence of Parliament and enabling it to perform constitutionally significant tasks (privilege of trial by the Supreme Court). The Second Chamber of the Supreme Court is consequently the court predetermined by law to hear criminal actions brought against Deputies and Senators for as long as they are not deprived of their status as Members of Parliament.

SPAIN
Relevant legal provisions

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 authorisation of the respective Chamber.

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

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 authorisation 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 authorisation 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 authorisation 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.

Rules of Procedure of the Senate

Rule 21

Senators shall enjoy inviolability, even after their mandates have ceased, for opinions expressed and votes cast while carrying out their duties.

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 authorisation of the Senate, requested by means of the respective request for the waiving of immunity. This authorisation 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.

FRANCE

I. The legal basis of parliamentary immunity

Parliamentary immunity is established by the first paragraph of Article 26 of the Constitution[34] which enshrines the non-liability of Members of Parliament for opinions expressed or votes cast by them in the performance of their duties.

Inviolability results from the second, third and fourth paragraphs of Article 26 of the Constitution and Article 9a of Edict No 58-1100 of 17 November 1958 relating to the functioning of the parliamentary assemblies. 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, together with Rule 105 of the Rules of Procedure of the Senate, set out the procedural rules governing the waiving of parliamentary immunity.

Article 41 of the Act of 29 July 1881 on the freedom of the press, as amended by Edict 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. The scope of parliamentary immunity

The wording of the first paragraph of Article 26 of the Constitution - by the number of nouns alone ('proceedings', 'investigations', 'arrest', 'detention', 'judgment') - clearly reflects the legislative desire to guarantee as far as possible the Members' freedom to exercise this 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 mandate. In its sphere of application, therefore, non-liability is absolute: no procedure allows this immunity to be 'waived'.

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

Case-law, however, seems to have supported a restrictive concept 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[35] or opinions expressed by a Member of Parliament in a report drafted during a mission assigned by the Government[36].

The protection afforded by non-liability is valid even when those acts constitute an offence or are likely to lead to damages.

34 This constitutional principle was affirmed in the Constitution of 3 November 1791 as regards non-liability and in that of 24 June 1793 as regards inviolability.

35 Cf. reply of the Keeper of the Seals, Minister of Justice dated 23 November 1978.

36 Cf. judgment of the Paris Court of Appeal of 11 March 1987 (Mr 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 Presidents use sanctions (call to order, call to order with entry in the minutes, censure, censure with temporary exclusion) laid down in the Rules of Procedure of the Assemblies which enable them to keep order and to ensure that debates are properly conducted.

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

Since the revision of the Constitution of 4 August 1995, proceedings may be initiated against Members of Parliament at any time, and the scope of inviolability is restricted to arrest and the implementation of measures to deprive the Member of freedom or restrict that freedom.

The new wording of the second paragraph of Article 26 of the Constitution lays down that 'No Member of Parliament may be arrested or subject to any other measure depriving the Member of freedom or restrict that freedom for criminal or minor offences without the authorisation of the Bureau of the Assembly to which he belongs.'

Since what is involved is the freedom of Members of Parliament to go about their business in the performance of their duties, the concept of 'arrest' is interpreted broadly: it includes holding on remand and in police custody. As an alternative to holding on remand, judicial supervision orders generally include measures to deprive the Member of freedom or restrict that freedom, which may well impede him in the performance of his duties. That is why all judicial supervision orders have been included within the scope of inviolability[37].

Inviolability is not applicable in the event of final sentence, i.e. when all avenues of appeal have been exhausted or the time-limits within which such avenues may be explored have expired.

Inviolability operates only in respect of criminal matters and lesser offences, 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, for the duration of the session, the suspension of detention, measures to deprive the Member of freedom or restrict that freedom or proceedings against one of its Members, pursuant to the third paragraph of Article 26 of the Constitution.

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, and the nullity of acts performed in violation of immunity.

37 Judicial supervision orders are listed in Article 138 of the Code of Criminal Procedure (see below).

III. The duration of parliamentary immunity

Non-liability is permanent and perpetual: its application is not influenced by the system of 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, may only be claimed within the limits of the duration of the parliamentary mandate: 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 no longer connected with the system of parliamentary sessions: the same system applies henceforth throughout the year.

In application of the third paragraph of Article 26 of the Constitution, the Assembly concerned may request the suspension of detention, measures to deprive the Member of freedom or to restrict that freedom or proceedings against one of its Members. The effect of such suspension is limited to the duration of the session during which it has been determined.

IV. The procedure for waiving parliamentary immunity

1. Article 9 of Edict No. 58-1100 of 17 November 1958 relating to the functioning of the parliamentary assemblies, together with Article 16 of the General Directive of the Bureau of the National Assembly and Rule 105 of the Rules of Procedure of the Senate, lay down the procedure to be followed with regard to requests for authorisation to arrest a Member or to take measures to deprive the Member of freedom or to restrict that freedom.

The request drawn up by the Public Prosecutor appointed to the competent Court of Appeal is forwarded by the Keeper of the Seals to the President of the assembly of which the person concern is a Member. Failure to comply with these formalities results in the procedure being declared null and void.

As regards substance, the request must indicate clearly the measures envisaged, which assumes that precise information will be given not only as to whether an arrest or placing under judicial supervision is involved but also, in the latter case, the requirements to which the Member of Parliament concerned is to be made subject.

The facts justifying these measures must also be set out in sufficient detail to allow for the application of the final paragraph of Article 9a of the Edict of 7 November 1958, which lays down that authorisation is valid only in respect of the facts set out in the request.

Article 16 of the General Directive of the Bureau of the National Assembly provides for a Bureau delegation to consider requests for authorisation.

The decisions of the Bureau of the assembly concerned are notified to the Keeper of the Seals and published in the official gazette (Journal officiel).

2. In order to enable the parliamentary assemblies to request the suspension of proceedings of measures to deprive the Member of freedom or to restrict that freedom or of detention, it is customary for the Keeper of the Seals to inform the President of the assembly concerned of all the proceedings in which a Member is involved. That procedure is laid down in Rule 80 of the Rules of

Procedure of the National Assembly, Article 16 of the General Directive of the Bureau of the National Assembly and Rule 105 of the Rules of Procedure of the Senate.

Requests for suspension take the form of a motion for a resolution which is printed, distributed and referred to an ad hoc committee.

For the consideration of each request for suspension, 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 and the author or first signatory of the motion. The obligation to hear the Member of Parliament in question and the author of the motion is not, however, provided for in the Rules of Procedure of the Senate.

The debate in open session concerns the committee's conclusions as set out in a motion for a resolution. In the National Assembly, only the committee's rapporteur, the Government, the Member 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 for by common 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).

By way of derogation from common parliamentary law, a rejection by the National Assembly of the ad hoc committee's conclusions to reject is equivalent to adoption of the request.

In the event of the rejection of a request for suspension, no new request concerning the same facts may be submitted during the course of the session (Rule 80(9) of the Rules of Procedure of the National Assembly).

The decisions of the Assembly are notified to the Prime Minister.

V. Parliamentary practice

It is not the task of the Bureau to pronounce on whether the Member is guilty or not but to take a decision, in accordance with standard criteria, on the serious, loyal and sincere nature of the request for authorisation to arrest the Member or to deprive the Member of freedom or to restrict that freedom.

It is difficult to assess in full the manner in which the Bureau carries out that task because the requests submitted to it are not made public, the Bureau deliberates in camera, and any justifications for its decisions, should they be given at all, are limited.

From the decisions taken hitherto, we might deduce that its power of discretion exceeds the simple alternative of accepting or totally rejecting the request and that it may retain certain elements. If the magistrate's request seeks both arrest and measures to deprive the Member of freedom, the Bureau may, by virtue of the facts presented, reject authorisation to arrest and merely authorise judicial supervision, with explicit reference also being made in its decision to the measures which might be implemented.

Furthermore, should the Member fail to comply with the requirements laid down, authorisation for judicial supervision does not allow the magistrate to have the Member arrested without further referral to the Bureau.

In virtually every case submitted to it since the revision of the Constitution, and although no official document obliges it to do so, the Bureau delegation responsible for considering the requests has heard the Member concerned, but the Member has not, conversely, been heard by the Bureau itself.

Of the six requests considered by the Bureau of the National Assembly since the revision of the Constitution, three have been rejected and three have authorised the Member's being placed under judicial supervision.

Of the five requests considered by the Bureau of the Senate, two have been rejected, one granted and two granted in part.

With regard to suspension of proceedings, measures to deprive the Member of freedom or to restrict that freedom or detention, the Assembly has discretionary powers. Depending on the circumstances, it has the task of weighing the challenge to national sovereignty resulting from proceedings and the problems arising for law and order as a result of suspension, those problems depending essentially on the nature and seriousness of the offence.

Of the four requests considered by the Assembly since 1958 (of which there has been none since 1995), two were rejected which concerned the detention of a Member following his participation in January 1960 in the 'Algiers barricades' uprising. Two were accepted which concerned offences covered by the commonly acknowledged concept of political campaigning (violation of the press laws, matters involving free radio stations and demonstrations).

For its part, the Senate accepted the nine requests tabled since 1958 (of which one was tabled since 1995).

As is clear from the foregoing, the French Parliament has had submitted to it and has considered very few requests for suspension.

FRANCE
Relevant legal provisions

Constitution

Article 26[38]

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 may be arrested or subject to any other measure depriving the Member of freedom or restricting that freedom for criminal or minor offences without the authorization of the Assembly to which he belongs, except in the case of a crime or *flagrante delicto* or of final sentence.

Detention, measures depriving the Member of his freedom or restricting that freedom or the prosecution of the Member of Parliament shall be suspended during the session if the Assembly of which he is a Member so demands.

The Assembly concerned shall meet automatically for additional sittings to enable, where appropriate, the provisions of the preceding paragraph to be applied.

Rules of Procedure of the National Assembly

Rule 80[39]

1. For the examination of requests for the suspension of detention of a Member, of measures depriving a Member of freedom or restricting that freedom or of legal proceedings against a Member, a committee of fifteen members and fifteen substitute members shall be set up at the beginning of the legislative period and, each year thereafter, at the beginning of the ordinary session, except for the ordinary session prior to renewal of the Assembly. Every effort shall be made in making appointments to reproduce the political configuration of the National Assembly, and where the chairmen of the groups fail to agree on a list of candidates, appointments shall be made by proportional representation of the groups, in accordance with the procedure laid down in Rule 25. One substitute member shall be paired with each member and may replace the member only for the full consideration of a request.

2. Chapter X on the procedure relating to the work of committees shall be applicable to the committee set up pursuant to this Rule.

3. The committee must hold a hearing of the author or first signatory of the motion and the Member concerned or the colleague whom he has asked to represent him. If the Member

38 Article amended by Constitutional Law No 95-880 of 4 August 1995.

39 This Rule is the result of resolution No 204 of 5 December 1960 and was amended by resolutions No 416 of 3 July 1962, No 151 of 26 January 1994 and No 408 of 10 October 1995.

concerned is detained, it may arrange for him to be heard in person by one or more of its members delegated for that purpose.

4. Without prejudice to the provisions of the following paragraph, requests shall be automatically included by the Conference of Presidents, as soon as the report of the 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. If the report has not been distributed within twenty session days of the 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.

5. In accordance with the final paragraph of Article 26 of the Constitution, the Assembly shall automatically meet for an extra sitting in order to consider a request for the suspension of detention, of measures depriving a Member of freedom or restricting that freedom or of legal proceedings against a Member; that sitting shall be held no later than one week after distribution of the report or, if the committee has not distributed its report, no later than four weeks after the filing of the request.

6. The discussion in open session shall concern the committee's conclusions formulated in a motion for a resolution. If the committee does not submit conclusions, the discussion shall concern the request brought before the Assembly. A motion of referral back to the committee may be tabled and discussed in the manner provided for in Rule 91. In the event of rejection of the conclusions of the committee that the request should be rejected, the latter shall be deemed to be adopted.

7. The Assembly shall decide on the merits of the case after the debate in which only the committee's rapporteur, the Government, the Member 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 the previous paragraph, 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.

8. The Assembly, when it receives a request for the suspension of proceedings against a Member who has been detained or is the subject of measures depriving the Member of freedom or restricting that freedom, may decide to suspend only the detention or all or part of the measures in question. Only amendments tabled to that end shall be admissible. Rule 100 shall apply to consideration of such amendments.

9. In the case of rejection of a request, 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

Application of Article 26 of the Constitution[40]

Requests for waiver of parliamentary immunity submitted pursuant to the second paragraph of Article 26 of the Constitution shall be addressed to the President of the Assembly, who shall refer them to the Bureau of the National Assembly. The decisions of the Bureau shall be prepared by a delegation appointed from among its members.

Such requests shall be formulated by the public prosecutors concerned, who shall specify the measures of arrest or the measures depriving the Member of freedom or restricting that freedom for which authorisation is sought. The requests of public prosecutors shall be forwarded to the President of the Assembly by the Keeper of the Seals, Minister of Justice.

Request for the suspension of proceedings, of detention or of measures depriving the Member of freedom or restricting that freedom submitted pursuant to the third paragraph of Article 26 of the Constitution shall be printed in the form of a motion for a resolution, distributed and sent to the committee set up pursuant to Rule 80 of the Rules of Procedure.

The decisions of the Bureau shall be notified to the Keeper of the Seals and published in the official gazette (*Journal officiel*). The decisions of the Assembly concerning the suspension of proceedings, of detention or of measures depriving the Member of freedom or restricting that freedom shall be notified to the Prime Minister.

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Rules of Procedure of the Senate

Rule 105[41]

1. A committee of thirty members shall be appointed each time the Senate has occasion to consider a motion for a resolution tabled with a view to requesting suspension of the detention of a Senator, of measures depriving him of his freedom or restricting that freedom or of proceedings brought against him.

   For the appointment of that committee, the President of the Senate shall set a time-limit within which nominations must be submitted in accordance with the principle of proportional representation. When the time-limit has expired, the President of the Senate, the chairmen of the groups and the representative of the administrative meeting of Senators not appearing on the list of any group shall meet to draw up the list of the members of the committee. That list shall be published in the official gazette (*Journal officiel*). The appointments shall take effect upon publication of the list.

40 Article amended by the Decisions of 15 November 1995 and of 29 January 1997 of the Bureau of the National Assembly.

41 Resolution of 16 January 1959 amended by the resolution of 21 November 1995.

2. The committee shall elect a bureau comprising a chairman, vice-chairman and a secretary and shall appoint a rapporteur.

3. The conclusions of the committee shall be presented no later than three weeks from the date of appointment of the members of the committee; the Conference of Presidents shall include those conclusions on the agenda of the Senate, once the committee's report has been distributed.

4. Where the Senate has received a request for the suspension of proceedings against a Senator who has been detained or who is the subject of measures depriving him of freedom or restricting that freedom, the Senate may decide to suspend only the detention or all or part of the measures in question.

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General Directive of the Bureau of the Senate

IIIa - Parliamentary immunities[42]

Application of Article 26 of the Constitution

In the cases provided for in the second paragraph of Article 26 of the Constitution, the arrest or any other measure depriving the Senator of freedom of restricting that freedom which might be taken against a Senator shall be the subject of a request for authorisation drawn up by the Public Prosecutor appointed to the competent Court of Appeal and forwarded by the Keeper of the Seals, Minister of Justice, to the President of the Senate. That request shall clearly specify the measures envisaged and the justification therefor.

The authorisation given by the Bureau of the Senate shall be valid only in respect of the facts set out in the request referred to in the preceding paragraph.

The decisions of the Bureau shall be notified to the Keeper of the Seals and to the Senator in respect of whom the request is made. They shall be published in the official gazette (*Journal officiel*) – (laws and decrees edition).

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42 This chapter was incorporated by Decision No 96-7 of 24 January 1996.

Judicial supervision orders

provided for in Article 138 of the Code of Criminal Procedure[43]

Judicial supervision orders require the person concerned to accept, in accordance with the decision of the examining magistrate, one or more of the obligations listed below:

1. to remain within geographical boundaries specified by the examining magistrate;

2. not to leave his home or the residence specified by the examining magistrate except under the conditions and for the reasons laid down by the same magistrate;

3. not to go to certain places or to go only to the places specified by the examining magistrate;

4. to inform the examining magistrate of any movement outside specified boundaries;

5. to report periodically to the departments or authorities specified by the examining magistrate, which are required to observe the utmost discretion regarding the charges made against the person under investigation;

6. to respond when summoned by any authority or other competent person specified by the examining magistrate and to submit, where necessary, to supervision measures relating to his professional activities or his attendance at a course of instruction;

7. to hand in, either at the court registry or at a police or gendarmerie station, all identity papers, in particular his passport, in return for a receipt serving as proof of identity;

8. not to drive any or some vehicles and, where necessary, to hand in his driving licence at the court registry in return for a receipt; however, the examining magistrate may decide that the person under investigation may use his driving licence in order to engage in his occupation;

9. not to receive or meet certain persons specifically designated by the examining magistrate nor to have any dealings whatsoever with them;

10. to submit to any examination, treatment or care, even entailing hospitalisation, in particular for the purpose of detoxification;

11. to provide a security, the amount of which and the time-limits for the payment of which - in one or more instalments - shall be fixed by the examining magistrate having regard, in particular, to the resources of the person under investigation;

12. not to engage in certain activities of a professional or social nature, with the exception of elective offices and trades union duties, when the infringement was committed during or on the occasion of the exercise of those activities and when it is feared that a fresh infringement will be committed. When the professional activity in question is that of a lawyer, the examining magistrate must refer the matter to the council of the lawyers' professional body,

43 The mechanism of judicial supervision was unknown when the 1958 Constitution was being drawn up. It was incorporated into French criminal procedure by Law No 70-643 of 17 July 1970 seeking to strengthen the guarantee of the individual rights of citizens so that examining magistrates would henceforth have at their disposal a whole series of measures which might be taken in respect of a person under investigation and resort only on an exceptional basis to holding such persons in custody.

which shall give a ruling in accordance with Article 23 of Law 71-1130 of 31 December 1971 reforming certain judicial and legal professions;

13. not to issue cheques other than those which allow only withdrawal of funds by the payee from the drawee or those which are certified and, where necessary, to hand in at the registry the cheques whose use is thus prohibited;

14. not to keep or carry a weapon and, where necessary, to hand in any weapons in their possession in return for a receipt;

15. to establish, within a specified time-limit, for a period and amount determined by the examining magistrate, personal sureties or sureties in the form of real property, intended to guarantee the rights of the victim;

16. to prove that he contributes to family expenses or regularly pays the maintenance he has been ordered to pay under a court ruling or judicially approved agreements involving an obligation to pay benefits, allowances or contributions to the dependants of the marriage.

IRELAND

I. The legal basis of parliamentary immunity

The legal basis of parliamentary immunity is embodied in Article 15(10, 12 and 13) of the Constitution of Ireland.

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

The Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 gives certain parliamentary committees the power to issue directions compelling persons to attend as witnesses, to give evidence and to produce or send documents. Persons who are directed to attend are given privileges and immunities in respect of their evidence, etc[44].

II. The 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, specifies exceptions for serious offences (treason, crimes, violation of law and order).

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 statement 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 referred to 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. The privileges and immunities conferred on persons who are directed by parliamentary committees to attend as witnesses are those enjoyed by a witness before the High Court and include, principally, the privilege of immunity from legal action in defamation and also a form of privilege against self-incrimination.

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.

44 The main provisions of this Act have not yet been tested in practice, and the preparation of guidelines by the Committee of Procedure and Privileges is in progress).

III. The 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 of unlimited 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.

IV. The procedure for waiving parliamentary immunity

There is no provision stipulating the procedure for waiving 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 meetings so as to submit voluntarily to legal proceedings.

V. Parliamentary practice

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

Nevertheless, two cases in the early 1990s[45] seem to have increased interest in holding a debate on the scope of these constitutional provisions, at both parliamentary and judiciary level.

45 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).

IRELAND
Relevant legal provisions

Constitution

Article 15

Paragraph 10

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.

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.

Committee of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 (Extract)

1. (1) In this Act, … 'a committee' means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a committee;

11. (1) Subject to subsection (2), a person whose evidence has been, is being or is to be given before a committee, or who produces or sends a document to a committee pursuant to a direction or who is directed to give evidence or produce a document to a committee or to attend before a committee and there to give evidence or produce a document, shall be entitled to the same privileges and immunities as if the person were a witness before the High Court,

(2) If a person who is giving evidence to a committee in relation to a particular matter is directed to cease giving such evidence, the person shall be entitled only to a qualified privilege in relation to defamation in respect of any such evidence as aforesaid given after the giving of the direction unless and until the committee withdraws the direction.

12. A statement or admission made by a person before a committee, or a document given or sent by a person to a committee pursuant to a direction of the committee to the person or specified in an affidavit of documents made by a person and given to a committee by the person pursuant to a direction of the committee to the person, shall not be admissible as evidence against the person in any criminal proceedings (other than proceedings relating to an offence under section 3(8) or the offence of perjury) and section 11 shall be construed and have effect accordingly.

Order of Dáil Committee on Procedure and Privileges of 19 February 1998

Ordered: That-

There shall stand established, upon the commencement by resolution of the Dáil of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1977, a sub-Committee, which shall be called the sub-Committee on Compellability, and shall consist of six members of whom three shall constitute a quorum. The sub-Committee shall –

(a) perform the functions conferred upon it by the Act

(b) be joined, as and when required for the purposes of the Act, with a similar sub-Committee of the Seanad Committee on Procedure and Privileges, to form the Joint sub-Committee on Compellability to perform the functions conferred upon it by the Act.

Standing Orders of the Dáil Éireann

"58.(1) A Member shall not make an utterance in the nature of being defamatory and where a Member makes such an utterance it may be *prima facie* an abuse of privilege, subject to the provisions of this Order.

(2)(a) If the defamatory nature of the utterance is apparent at the time it was made during the course of proceedings, the Ceann Comhairle shall direct that the utterance be withdrawn without qualification.

(b) If the Member refuses to withdraw the utterance without qualification, the Ceann Comhairle shall treat the matter as one of disorder. Provided that the Member may claim that the matter be referred to the Committee on Procedure and Privileges in which case no further action shall be taken thereon by the Ceann Comhairle at that point.

(3) If the defamatory nature of the utterance is not apparent at the time during the course of proceedings and at the earliest opportunity but not later than two weeks after the making of the utterance -

(a) the alleged abuse of privilege is raised by a Member with a request that it be considered by the Ceann Comhairle or referral to the Committee on Procedure and Privileges directly is sought by a Member by way of motion, or

(b) where a person who has been referred to by name, or in such a way as to be readily identifiable, in the Dáil, makes a submission in writing to the Ceann Comhairle -

(i) claiming that the person has been adversely affected by the making of a utterance in the nature of being defamatory within the meaning of this Standing Order,

(ii) setting out the reasons why the person claims the said utterance was in the nature of being defamatory and why the said utterance prima facie constitutes an abuse of privilege,

(iii) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the Ceann Comhairle is satisfied that:-

(c) the Member's request or the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that further action be taken or that it be considered by the Committee; or

(d) it is not practicable for the Committee to consider the Member's request or the submission under this Standing Order,

(e) taking into account the totality of the parliamentary record (including any rebuttal of the utterance concerned by other Members), prima facie no abuse if privilege has occurred, the

Ceann Combairle may decide that no action shall be taken in respect of the Member's request of the submission.

In any other case the Ceann Combairle may:-

(i) require the Member who made the utterance to make a personal explanation to the House in effect to withdraw without qualification the utterance made or to clarify otherwise the circumstances that gave rise to the utterance as may be deemed appropriate, provided that the Member may claim that the matter be referred to the Committee on Procedure and Privileges in which case no further action shall be taken thereon by the Ceann Comhairle at that point, or

(ii) refer the Member's request or the submission to the Committee.

(4) Where the request or submission is referred to the Committee:-

(a) The Committee may decide not to consider the request or submission referred to it under this Standing Order if the Committee considers that the subject of the request or submission is not sufficiently serious or is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Dáil;

(b) If the Committee decides to consider a request or submission under this Standing Order:-

(i) the Committee may invite the Member who made the utterance and such other Members as the Committee may deem appropriate to appear before the Committee to put his or her case;

(ii) in considering a request for submission and reporting to the Dáil the Committee shall not consider or judge the truth of any statements made in the Dáil or of the submission;

(c) The Committee shall have discretion to publish a submission referred to it under this Standing Order or its proceedings in relation to such a submission, and may lay minutes of its proceedings and all or part of such submission before the Dáil.

[-]

(5) In any report which it may make to the Dáil on a request or submission under this Standing Order, the Committee may make any of the following recommendations:-

(a) That prima facie no abuse of privilege has occurred and that no further action be taken by the Dáil or by the Committee in relation to the submission; or

(b) if the Committee decides that a Member has made an utterance in the nature of being defamatory and that prima facie an abuse of privilege has occurred:-

(i) that a response by the person who made the submission, in terms specified in the report, following consultation with such person, be published in the Official Report or

be laid before the Dáil or recorded in such a manner as may be deemed appropriate by the Committee, or

(ii) that the Member who made the utterance be required to make a personal explanation to the House in effect to withdraw without qualification the utterance made or to clarify otherwise the circumstances that gave rise to the utterance as may be deemed appropriate: Provided that, if the Member refuses to make a personal explanation on foot of such recommendation, the Ceann Comhairle shall at the commencement of business on the next sitting day, or at the earliest convenient opportunity, on which the Member is present, reprimand the Member in his or her place.

(6) Any decision taken by the Committee under paragraph (5)(b) of this Standing Order shall require the support of three-quarters of the Members present and voting.

(7) Notwithstanding the provisions of this Standing Order (save the provisions of paragraph (6), which shall continue to apply) the Committee, following consideration of a request or submission under this Standing Order, may make such recommendations as appear to it to be required in the interests of all concerned.

(8) A document laid before the Dáil under this Standing Order:

(a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions at issue and shall not contain anything offensive in character; and

(b) shall not contain any matter the publication of which would have the effect of :

(i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (11) of this Standing Order,

(ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

(9) In considering a matter under this Order the Ceann Comhairle or the Committee, as the case may be, shall take into account the following:-

(a) whether the Member who made the utterance did so in a responsible manner, acted in good faith, and ensured, as far as is practicable, that the utterance reflecting adversely on a person was soundly based,

(b) the totality of the parliamentary record, including any rebuttal of the utterance concerned by other Members,

(c) that the said Member made a personal explanation in effect to withdraw the defamatory nature of the utterance, and

(d) the extent to which-

(i) the substance of the utterance was already in the public domain by way of reports in the media; or

(ii) the Member had reasonable excuse or otherwise for making the utterance.

(10) Notwithstanding the provisions of this Standing Order:-

(a) any Member who considers that it is in the public interest for him or her to make an utterance which could be construed as being in the nature of defamatory, may give prior private notice to the Ceann Comhairle of his or her intention to make such an utterance and the reasons therefor; and such notice shall be taken into account in the consideration of the application of the provisions of this Standing Order,

(b) the Ceann Comhairle may at any time on his or her own volition refer an utterance in the nature of being defamatory to the Committee.

(11) For the purposes of this Standing Order:-

An "utterance in the nature of being defamatory" shall mean an utterance which, in the opinion of the Ceann Comhairle or of the Committee, could be construed as being defamatory if made other than in the course of Parliamentary proceedings whereby a person who has been referred to by name or in such a way as to be readily identifiable has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person;

"Committee" shall mean either the Dáil Committee on Procedure and Privileges or a sub-Committee thereof;

'Proceedings' shall mean parliamentary proceedings of the Dáil, a Standing, Select or Special Committee or a sub-Committee thereof."

"91. (1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee on Procedure and Privileges, to-

(a) consider matters of procedure generally and to recommend any additions or amendments to Standing Orders that may be deemed necessary,

(b) without prejudice to the generality of paragraph (a), oversee the procedure in Standing, Select and Special Committees (as the case may be), whether by request from the relevant Committee or otherwise, and to examine, where appropriate, the role of Committees as they evolve,

(c) consider and report, as and when requested to do so, as to the privileges attaching to Members,

(d) consider, if it deems it advisable, any matter relating to the conditions or premises in which Members carry out their duties and which are not specifically referred to any other Committee,

(e) consider the annual draft Estimate for the Houses of the Oireachtas and the European Parliament and to make such recommendations thereon to the Minister for Finance as the Committee thinks fit, and

(f) make recommendations, whether by request or otherwise, to the Joint Committee on Broadcasting and Parliamentary Information on the rules of coverage for the televising of proceedings of Dáil Éireann and its Committees [See Standing Order 92B(4)].

(2) The Committee shall have the following powers:

(a) power to appoint sub-Committees as defined in Standing Order 78A(3);

(b) power to engage consultants as defined in Standing Order 78A(8);

(c) power to travel as defined in Standing Order 78A(9) (other than subparagraph (b) thereof); and

(d) power to print and publish reports and to authorise sub-committees to report directly to the Dáil as defined in Standing Order 79A(1).

(3) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a sub-Committee, which shall be called the sub-Committee on Dáil Reform, and shall consist of the Party Whips who are members of the Committee (or if they number less than five, the Party Whips and such other members of the Committee as the Committee may decide, up to a maximum of five members) and three shall constitute a quorum. The sub-Committee shall-

(a) perform the functions set out at paragraphs (1)(a), (1)(b), (1)(c) and (1)(f) of this Standing Order, and

(b) determine from time to time rules governing proposed expenditure by Standing, Select or Special Committees and to review and modify such rules, where necessary,

and may report directly to the Dáil.

(4)(a) At its first meeting following its appointment, the Committee shall appoint a sub-Committee, which shall be called the sub-Committee on Members' Services, to consider and, if necessary, report on such matters under paragraphs (1)(d) and (1)(e) of this Standing Order as may be referred to the sub-Committee by the Committee.

(b) The sub-Committee shall consist of eight members, at least one of whom shall be a member of the Committee, and the quorum of the sub-Committee shall be three. The Chairman of the sub-Committee shall be a member of the Committee.

(c) A member of the sub-Committee who is unable to attend a particular meeting of the sub-Committee may nominate another member to take part in the proceedings and vote in his or her stead.

(5) The Committee shall consist of the Ceann Comhairle, who ex officio shall be Chairman and who shall have only one vote, and seventeen other members; and eight shall constitute a quorum. In the unavoidable absence of the Ceann Comhairle, the Leas-Cheann Comhairle may act as Chairman in his or her stead. The Committee shall be constituted so as to be impartially representative of the Dáil."

Standing Orders of Seanad Éireann

"84. (1) There shall stand established at the commencement of every Seanad a Standing Committee to be known as the Committee on Procedure and Privileges, to-

(a) consider matters of procedure generally and to recommend any additions or amendments to these Standing Orders that may be deemed necessary,

(b) consider and report, as and when requested to do so, as to the privileges attaching to Members,

(c) consider, if it deems it advisable, any matter relating to the conditions or premises in which Members carry out their duties and which are not specifically referred to any other Committee, and

(d) without prejudice to the generality of paragraph (a), oversee the procedure in Standing, Select and Special Committees (as the case may be), whether by request from the relevant Committee or otherwise, and to examine, where appropriate, the role of Committees as they evolve,

(e) determine from time to time rules governing proposed expenditure by Select or Special Committees and to review and modify such rules, where necessary,

(f) make recommendations, whether by request or otherwise, to the Joint Committee on Broadcasting and Parliamentary Information on the rules of coverage for the televising of proceedings of Seanad Éireann and its Committees [See Standing Order 88].

(2) The Committee shall have power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by this Standing Order and to delegate any of its powers under this Standing Order to such sub-Committees.

(3) At its first meeting following its appointment, the Committee shall appoint a sub-Committee, which shall be called the sub-Committee on Members' Services, and shall consist of four members to perform the functions as set out at paragraph (1)(c). The quorum of the Committee shall be three. A member of the sub-Committee who is unable to attend a particular meeting of the sub-Committee may nominate another member to take part in the proceedings and vote in his or her stead.

(4) There shall stand established, upon the commencement by resolution of the Seanad of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997, a sub-Committee, which shall be called the sub-Committee on

Compellability, and shall consist of five members of whom three shall constitute a quorum. The sub-Committee shall—

(a) perform the functions conferred upon it by the Act,

(b) be joined, as and when required for the purposes of the Act, with a similar sub-Committee of the Dáil Committee on Procedure and Privileges, to form the Joint sub-Committee on Compellability to perform the functions conferred upon it by the Act.

(5) Subject to the consent of the Minister for Finance, the Committee shall have power to engage the services of persons with specialist or technical knowledge to assist it or any of its sub-Committees in considering particular matters.

(6) Every report which the Committee proposes to make shall, on adoption of the Committee, be laid before Seanad Éireann forthwith, together with any document relating thereto which the Committee proposes to publish, whereupon the Committee shall be empowered to print and publish such report and the said document or documents, as the case may be: Provided that the Committee may expressly delegate powers under this paragraph to any sub-Committee, in respect of reports generally or in respect of an individual report.

(7) The Committee shall consist of the Cathaoirleach, who ex officio shall be Chairman, the Leas-Chathaoirleach, and ten other members. In the unavoidable absence of the Cathaoirleach, the Leas-Chathaoirleach may act as Chairman in his stead. The quorum of the Committee shall be five."

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, who cannot be made answerable for opinions expressed and votes cast in the performance of their duties. On the other hand, the second and third paragraphs of Article 68 lay down rules governing what is termed parliamentary 'inviolability'.

Rule 18 of the Rules of Procedure of the Chamber of Deputies and Rules 19 and 135 of the Rules of Procedure of the Senate govern the procedures for examination of requests regarding parliamentary immunity.

II. The scope of parliamentary immunity

Article 68 of the Constitution was modified by Constitutional Law No 3 of 29 October 1993. On the one hand the new wording of the Article introduces substantial new elements into the rules governing the 'inviolability' of Members of Parliament, by deleting the reference to authorisation to bring legal proceedings and introducing the obligation to obtain authorisation for other forms of investigation, but on the other hand it does not affect, or at least does not appear to affect, the rules governing 'non-liability' or 'absolute immunity' ('*insindacabilità*') since it merely replaces the words '(Members of Parliament) *may not be prosecuted* (on account of opinions expressed and votes cast)' with the words '*may not be made answerable for*'. The purpose of the modification was to specify that the prerogative covers all kinds of criminal, civil, administrative and disciplinary liability.

The second and third paragraphs of the new Article 68 state that the authorisation of the Chamber to which the Member belongs is no longer needed in order to subject a Member of Parliament to criminal proceedings but only in order to:

(a) *search* his person or home;

(b) *arrest him or otherwise deprive him of personal liberty or keep him in detention*, except in the execution of a final conviction or unless he is caught in the act of committing an offence, in flagrante, for which an order of arrest is compulsory;

(c) subject him to *interception*, by any means, of his conversations or communications;

(d) *sequester his correspondence*.

Non-liability for opinions expressed and votes cast in the exercise of a Member's duties in accordance with the first paragraph of Article 68 of the Constitution

General outline

In order to explain fully the new elements introduced by the new rules we should perhaps first mention the rules which were previously in force. On the basis of the old version of Article 68, the judicial authorities were obliged to forward to Parliament, for the purposes of obtaining authorisation to bring proceedings, the files relating to all the criminal proceedings brought against Members. Whilst this text was in force, it became parliamentary practice, in response to a request for authorisation to bring proceedings in a case which was considered to be covered by the prerogative of non-liability referred to in the first paragraph, for the competent committee, and then the Assembly, not to decide whether to grant or refuse the request but to return the files to the judicial authority so that it could close the proceedings, in compliance with the rule in question.

The legal frame of reference applicable in this instance consists primarily of the interpretation of Article 68, first paragraph, handed down by the Constitutional Court in a 1988 ruling (No 1150) and subsequent rulings which have taken much the same line. The Court's interpretation provides a basis on which to identify the authority empowered to rule on matters of non-liability and to determine the scope of the constitutional provision.

Proceeding from the premiss that Article 68, encompassed within the powers defined by the Constitutional Court, may be interpreted systematically, the ruling has served to lay down three key principles: 1. since parliamentary privileges necessarily imply authority on the part of the supervisory body which established them, it falls to each House to decide whether its members are covered by non-liability in respect of opinions expressed and votes cast; 2. the decision of a House debars a judicial authority from ruling to the contrary; 3. the decisions of the Houses, however, may not be arbitrary or governed solely by an internal self-restraint rule and consequently, should the judicial authority invoke concurrent jurisdiction, might become subject to review by the Constitutional Court in order to ascertain that they were not marred by procedural flaws or manifestly arbitrary by nature.

This attitude has recently been confirmed by the Court in (to name but the most important examples) rulings N^{os} 443, in 1993, 129 (1996), 265 (1997), 375 (1997), and 298 (1998).

As regards civil and disciplinary proceedings, it should be noted that following the first judgment mentioned above, whilst the old text of Article 68 was still in force, Parliament introduced the practice whereby the Chamber, even in the absence of specific rules on the subject, could decide, at the request of the Member of Parliament concerned, on non-liability for opinions expressed and votes cast by its Members, if compensation had been requested in a civil court or disciplinary proceedings initiated. Notification of the decision was sent by the President of the Chamber to the judicial body which - if it did not consider there was a conflict of powers - took a decision on the dispute in accordance with the parliamentary decision.

Current rules

After the Constitution was amended in 1993, the Government, acting in an area traditionally lying solely within the Houses' sphere of autonomy, issued a decree law (which was reintroduced, with some changes in the different successive versions, as many as 18 times and eventually allowed to lapse by the Government itself in the wake of the 1996 ruling by the Constitutional Court (No 360)

prohibiting repeat versions of unconverted decree laws) with a view to rationalising the subject-matter in accordance with the guidelines laid down in the Court's interpretation. The various arrangements proposed - which took different forms in the individual versions that followed over time[46] - established a dual system whereby responsibility for declaratory non-liability judgments would be shared by the judicial authority and the Houses.

The practice adopted after the last decree law (n° 555 of 23 October 1996) lapsed, bearing in mind that there is no legislation whatsoever on the subject, in many ways marks a return to the established procedure used for summonses in civil matters, whereby decisions are taken on the basis of notifications to the Chamber presidencies by individual Members. The President of the Chamber concerned refers the matter to the Authorisations Committee and makes an announcement in the plenary.

Having already been adopted by the Chamber, a draft implementing law applicable to Article 68 is currently under consideration in the Senate. The bill is intended to regulate various procedural and substantive aspects related to interpretation of the above constitutional provision as regards both non-liability and authorisations as defined in the second and third paragraphs of Article 68.

Arrangements for authorisation in accordance with Article 68 of the Constitution

The measures for which authorisation is needed are listed in the second and third paragraphs of Article 68 of the Constitution (see above). The decree law referred to above specified that authorisation was to be requested by the judicial authority *which had issued* the provision to be executed (and hence the Public Prosecutor's Office in the case of searches and sequestration, the judge in the case of preliminary investigations, or the relevant judicial authority in the case of other measures restricting personal freedom and involving the interception of communications). This interpretation has likewise been confirmed by the practice followed since the last decree law lapsed. Enforcement of the measure is suspended pending authorisation.

III. The duration of parliamentary immunity

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

Members of Parliament are covered by the immunity provided for in Article 68, second and third paragraphs, of the Constitution while they remain in office, i.e. for the duration of 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'[47].

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).

46 Decree law of 13 November 1993, n° 455; decree law of 14 January 1994, n° 23; decree law of 17 March 1994, n° 176; decree law of 16 May 1994, n° 291; decree law of 15 July 1994, n° 447; decree law of 8 September 1994 n° 535; decree law of 9 November 1994, n° 627; decree law of 13 January 1995, n° 7; decree law of 13 March 1995, n° 69; decree law of 12 May 1995, n° 165; decree law of 7 July 1995, n° 276; decree law of 7 September 1995, n° 374; decree law of 8 November 1995, n° 466; decree law of 8 January 1996, n° 9; decree law of 12 March 1996, n° 116; decree law of 10 May 1996, n° 253; decree law of 10 July 1996, n° 357; decree law of 6 September 1996, n° 466; decree law of 23 October 1999, n° 555.

47 Rule 1 of the Rules of Procedure of the Chamber.

IV. The procedure for waiving parliamentary immunity

Chamber of Deputies

Rule 18 of the Rules of Procedure – as the text stood before Article 68 was revised – still constitutes the applicable reference point when considering requests for authorisation to take the measures listed in the new text of Article 68. Moreover, as a result of its practical operation, the decision-making procedure as regards non-liability has likewise come to be established on the same footing.

On the basis of the provisions of that law, the procedure in committee starts with the forwarding of the files by the President of the Chamber.

The chairman of the committee appoints a rapporteur for each measure and draws up the agenda for the meeting.

The document is examined in accordance with the following procedure.

After the rapporteur has presented his report, which explains the contents of the files and sets out a proposal for a decision (or reserves the right to formulate one following the subsequent stage in the procedure) the Member of Parliament concerned is heard, in order to allow him to offer explanations and answer questions put by members of the committee. After the Member concerned has left the Chamber there is a general discussion, starting with an introduction by the rapporteur, who adds further comments or formulates his proposal if he has not already done so.

After all the Members who have requested to do so have spoken, the vote is held and may be preceded by brief explanations of vote. The committee votes on the rapporteur's proposal on the subject at issue or, beforehand, proposals of a procedural nature drawn up by other members of the committee.

If the rapporteur's proposal is rejected, the chairman instructs another member of the committee to report to the Assembly on the decision adopted. If it is accepted the rapporteur for the committee also acts as rapporteur in the Assembly.

In the Assembly too, the debate, introduced by the rapporteur, goes through the usual stages - general discussion, explanations of vote, voting - but the Member concerned is not given a hearing specifically, although he may speak during the discussion in the same way as any other Member.

The arrangements for consulting the files relating to proceedings attached to requests for authorisation are as follows.

The deliberations of the committee are published in the summary record published in the Bulletin of Parliamentary Committees (Rule 65(1) of the Rules of Procedure of the Chamber of Deputies).

In accordance with unchanging practice and for reasons of confidentiality regarding persons and legal acts, the summary record mentions only the main stages in the procedure, the names of the Members who spoke, any explanations of vote and the outcome of the vote.

Minutes are also taken of the meetings of the committee, reporting, in addition to what was included in the summary record, a summary of what was said and how the members of the committee voted.

These minutes, which are signed by the chairman of the committee and one of the members acting as secretary, can be consulted only by members of the committee and, in accordance with unchanging practice, no copies can be made.

Senate

Under Rule 19(5) of the Senate's Rules of Procedure, the body responsible for considering authorisations to proceed, including requests concerning non-liability within the meaning of Article 68, first paragraph, is the Committee on Electoral Matters and Parliamentary Immunities.

The committee consists of 23 Senators and is chaired by a Senator elected from among the committee members. The Senators appointed to the committee by the President of the Senate may not refuse to serve and are forbidden to resign. If, for very serious reasons, a member cannot attend committee meetings for a lengthy space of time, the President of the Senate may appoint a replacement. If the committee holds no meetings for more than a month, even after being repeatedly convened by its chairman, the President of the Senate will appoint new members.

The procedure is governed by Rule 135 of the Senate's Rules of Procedure, which is observed where applicable when the Senate has to deal with any requests for authorisation under Article 68 of the Constitution.

When requests for authorisation are sent to the Senate, the President submits them to the committee for consideration. The appropriate Minister forwards such documents as the committee might request. Once a judge seeking authorisation for proceedings has sent copies of the related documents, the President of the Senate not only passes them on to the committee, but also makes sure that the committee receives any letters from Senators giving notice of proceedings in progress.

The committee does not have to take a decision on a request for authorisation to proceed if, and only if, the Minister informs it that the proceedings in question have ended. To ensure that the committee has a quorum at meetings at which it considers authorisations to proceed, at least a third of the members must be present. The only persons entitled to examine files and documents sent to the committee relating to authorisations to proceed are committee members meeting in committee. If he has not appeared before the judge of his own free will to make statements within the meaning of the Code of Criminal Procedure, the Senator in respect of whom authorisation to institute legal proceedings has been requested may explain the position to the committee, for instance by submitting written notes.

In committee, after the chairman has opened the proceedings by outlining the facts of the case, the committee hears the Senator (or former Senator) concerned, who makes clarifications in accordance with Rule 135(5) of the Senate's Rules of Procedure and may likewise supply a written statement or be called upon to answer questions from fellow Senators. Once the Senator concerned has been asked to leave, the chairman declares the discussion open, and those Senators who wish to do so are permitted to speak. The committee may naturally discuss or put forward proposals on procedural matters and, for example, ask the judge instituting the proceedings to consider the request proper or any further action to be taken on it or forward copies of the relevant documents (Article 2(7) of the now lapsed decree law No 555 of 23 October 1996 also explicitly provided for suspension of proceedings). Even though the decree law has lapsed, the committee can still ask the judicial

authority instituting the proceedings to send copies of documents relating to the case against the Senator concerned. If it has to take a decision on proceedings in which the question of non-liability has been directly invoked before the Senate by the persons concerned, the committee generally seeks to obtain the case documents. It may also ask the Senator to supply documents that might be of use when considering the case (for example questions tabled in the House or newspaper articles).

The committee must report to the Senate within 30 days from the date of referral of the request unless an extension has been granted (the deadline may be extended once only, for a period not exceeding the duration of the original time-limit). It usually instructs a Senator to draw up the report for the plenary. If the report has been submitted or the above time-limit has expired before a decision has been taken, the request is included among the items to be entered in the calendar of legislation or the schedule of work in progress. Minority reports may be submitted in every case.

As regards decisions relating to non-liability, the committee may propose that the plenary declare that the conduct giving rise to the proceedings has to do with the performance of parliamentary duties and is therefore covered by non-liability under Article 68, first paragraph, of the Constitution or, conversely, that the occurrences in question are not connected with opinions expressed while carrying out parliamentary duties and consequently do not correspond to the case referred to in the above-mentioned passage of the Constitution. At its meeting of 20 March 1997 the committee agreed unanimously to alter its voting criteria, thereby ensuring that the subject of its decision would not be the proposal that had apparently secured the broadest support in the discussion, but a proposal to declare that the conduct giving rise to proceedings related to opinions expressed by a Member of Parliament carrying out his duties within the meaning of Article 68, first paragraph, of the Constitution.

The plenary acts on the proposal from the committee or, where there is no proposal, rules on the request for authorisation after hearing the background report by the committee chairman or another member expressly delegated by the committee. The final decision thus rests with the Senate in plenary sitting, which may reject or approve the committee's proposal without a written report setting out the reasons for the decision. In most of its proposals to date, the committee has taken the view that the Members in question were covered by non-liability. The plenary, which has rarely ruled out non-liability, may also decide to instruct the committee to reconsider the case documents to determine what action should be taken if the formal papers are not deemed a sufficient basis for a proposal.

V. Parliamentary practice

Chamber of Deputies

The first paragraph of Article 68 has been the subject of controversy both in learned articles and in case-law.

The two extreme positions can be summarised as follows: on the one hand there is the view that the first paragraph covers only activities carried out inside Parliament and which have a specific functional content; on the other hand there is the view that every activity which is 'political' in the broad sense of the term (hence also political meetings, press statements, etc.) can come within the scope of this provision of the Constitution.

Until the repeal of authorisation - in particular in the parliamentary terms preceding the eleventh - the problem was seen in less strict terms, since it was the practice in both Chambers to deny

authorisation in respect of political activities in the broad sense (legal theorists spoke of 'indirect non-liability' - *insindacabilità indiretta* - in this context).

In the twelfth parliamentary term (from 15 April 1994 to 16 February 1996), the Chamber has adopted broader interpretative criteria and considers that the first paragraph of Article 68 is to be interpreted as follows:

(a) the constitutional prerogative 'covers' all forms of conduct connected with the Member of Parliament's political activity in the broadest sense;

(b) it also applies to conduct outside the premises of Parliament (so-called '*extra moenia* activities');

(c) its application is not ruled out even in respect of 'objectively offensive' opinions, hence, those which can be considered in the abstract as unlawful[48].

This attitude has essentially been confirmed (with some variations) in the thirteenth parliamentary term: as at 15 March 1999, a total of 240 cases involving civil or criminal proceedings have been submitted to the Chamber for a decision on non-liability (the figure covers cases referred by a judicial authority, the 30 cases carried forward from the preceding parliamentary term, and cases notified by individual Deputies. Out of 127 decisions, 111 have upheld non-liability

In the recent rulings mentioned above, the Constitutional Court has maintained that the privilege provided for in Article 68, first paragraph, of the Constitution applies not only to parliamentary duties in the narrow sense, but also to actions performed in preparation for (although there have been contrasting interpretations on that point) and resulting from those duties, but not to a Member of Parliament's political activity as a whole.

The criteria on the basis of which the committee must propose to the Assembly that it refuse or grant the authorisation provided for in Article 68, second and third paragraphs, of the Constitution are open to debate. In particular, during the consideration of requests for authorisation for arrest received during the eleventh parliamentary term, it was debated whether the Chamber's assessment should be based on the same grounds as those examined by the judicial authority or whether it should examine other aspects, such as the possible existence of a *fumus persecutionis*, or the need to protect plenary. In the decisions taken the former approach seems to have prevailed.

In the current parliamentary term, in addition to the requests for authorisation for telephone tapping, discussed in the next paragraph, the Chamber has received five requests for authorisation of arrest, all of which have been rejected.

As indicated above, the new text of Article 68 expressly stipulates that authorisation must be obtained to tap a Member's telephone. The assumption has been (an obligation to that effect was laid down in the last decree laws governing the subject, beginning with the 1996 Ministerial Decree Law 116 (Article 5), and Article 68 itself, which speaks of interception of a Member's communications 'in any form', at least implies the same thing) that authorisation (of necessity after the event) is required if, for the purposes of proceedings against a Member, reference is to be made to conversations that he might happen to have had on a tapped telephone belonging to a third party (indirect tapping, as it is termed). The same reasoning should hold good – although no specific cases

48 Doc. IV - ter, No 7-A, Marino report..

have arisen to date – for bugging. It is open to dispute whether the third paragraph of Article 68 also applies to telephone traffic printouts obtained for use in proceedings. A conflict of jurisdiction between the Chamber and the Office of the Public Prosecutor attached to Palermo Court is currently before the Constitutional Court.

In the present parliamentary term the Chamber has been requested to authorise 'indirect tapping' in four cases. It has rejected the request twice and granted it once. The fourth case is still being considered in committee.

Senate

Recent developments have served to consolidate trends seen previously. The point at issue is not so much authorisation to institute proceedings or make an arrest (Article 68, second and third paragraphs), which can give rise to political problems or debate within the public at large but does not usually pose particular technical difficulties.

As far as decisions on non-liability are concerned the thinking is different. What normally happens is that no further steps are taken if a judge has ruled that the proceedings against a Senator must lapse[49] following a declaration of non-liability within the meaning of Article 68, first paragraph of the Constitution, issued by the Senate in the light of actions which the Senator is alleged to have committed (the judge will have forwarded a copy of his ruling to enable the appropriate parties to take cognisance of it).

In fact, although the Constitution contains no express provision to that effect, an action on account of concurrent jurisdiction may be brought before the Constitutional Court after a House of Parliament has issued a declaration of non-liability. Article 134 of the Constitution provides – in substance – for the right to do so in cases where an organ of State considers one of its powers to have been violated by other organs and there is no higher authority to which to appeal. The parties to the dispute in this instance are a judge (in one of the various forms that 'diffuse' judicial authority can take) and a House.

A House and a judge may come into conflict for another reason if, notwithstanding the fact that the House may have decided that the actions which are the subject of proceedings are tantamount to opinions expressed by a Member of Parliament carrying out his duties, the judge has not abided by the parliamentary decision because he believes that the rule of parliamentary non-liability, constituting an exception to the general rule of liability, should be interpreted in a narrow sense and therefore not apply. If the judge accordingly continues the proceedings because he does not consider Article 68 to be applicable, even though the Member concerned may have brought about a ruling by the House to which he belongs, that House may invoke a conflict of jurisdiction with the judge.

One case has been affected both by the eventuality described above and by the lapse of the decree laws. After the Senate had upheld his non-liability, the Senator concerned learned that the proceedings against him were continuing and informed the Senate. The court conducting the proceedings was consequently asked whether the examining magistrate had taken cognisance of the letter in which the President of the Senate had informed the court that it had issued a declaration of non-liability in respect of the proceedings. The court indicated that the magistrate had received the note from the President of the Senate but had considered himself obliged to commit the Senator for

49 Some people consider that acts in respect of which a Member of Parliament has immunity cannot, by definition, be illegal.

trial because the decree laws implementing Article 68 of the Constitution had lapsed. The Senate has invoked a conflict of jurisdiction between organs of State.

Although there is no specific legislation, it has been assumed that the Members concerned may, on their own initiative, request the Houses to consider matters pertaining to non-liability[50] and judges conducting proceedings may rule that they are covered by the privilege set out in Article 68, first paragraph, of the Constitution or send the case documents to the House concerned to enable it to state its position on the matter. Under Article 68 of the Constitution, therefore, and, according to some views, the 1988 Constitutional Court ruling No 1150[51], not only do the Houses have the power to decide whether their Members are covered by non-liability in respect of the opinions they express and the votes they cast, but, in addition, any decision by the Houses to uphold liability debars a judicial authority from ruling to the contrary. The principles set out in the 1988 ruling No 1150 are also to be found in the 1993 ruling No 443 and, to some extent, the 1996 ruling No 379. The Houses are required in any event to take a decision on matters referred to them relating to the applicability of their constitutional privileges. The Senate in plenary likewise endorsed this reasoning at its sitting of 16 January 1999, when it declared that a Senator could not be considered liable for the opinions he had expressed, approving a proposal to that effect from the committee.

As regards procedure, even though the provisions of the lapsed decree laws cannot apply, the essential rules do not appear to have altered. While proceedings are taking place, the Member of Parliament concerned, acting on his own initiative, may raise the question whether Article 68, first paragraph, of the Constitution, can be deemed to be applicable, and the judge is similarly still permitted to notify the appropriate House that the proceedings are such that the privilege of non-liability could be challenged, in this way requesting its decision. With regard to proceedings, the main new development resulting from the lapse of Decree Law No 555 appears to be the fact that they no longer need to be suspended while awaiting the decision of the Houses.

Senate

FIGURES FROM 1994 TO DATE (17 February 1999)

(12th and 13th parliamentary terms)

12th parliamentary term – 15 April 1994 to 16 February 1996

Requests for decisions on non-liability within the meaning of Article 68, first paragraph, of the Constitution

Requests received:	8
Decisions upholding non-liability:	5[52]
Decisions recognising liability:	0

Requests for authorisation to take coercive measures
within the meaning of Article 68, second paragraph, of the Constitution

Requests received:	2
Proposals to grant the request:	0
Proposals to reject the request:	2

13th parliamentary term (since 16 February 1996)

50 As was the practice with respect to civil proceedings when the previous version of Article 68 was in force.

51 This ruling was handed down at a time when authorisation to institute proceedings against Members of Parliament was still required under the Constitution

52 Because the two Houses of Parliament were dissolved, the Senate did not discuss all of the documents considered by the committee.

Requests for decisions on non-liability
within the meaning of Article 68, first paragraph, of the Constitution

Requests received:	51
Decisions upholding non-liability:	30
Decisions recognising liability:	6
Withdrawal of action:	3
Incompetency of the Senate:	2
(because the other House of Parliament is responsible)	
Requests pending:	10

ITALY
Relevant legal provisions

Constitution

Article 68

Members of Parliament may not be made answerable for opinions expressed or votes cast in the exercise of their duties.

No Member may, without the authorisation of the Chamber to which he belongs, be subjected to searches on his person or in his home, nor may he be arrested or deprived in any other way of his personal liberty, or held in detention, save in the execution of a final conviction, or unless he be caught in the act of committing an offence *in flagrante*, for which an order of arrest is compulsory.

Similar authorisation is required in order to subject Members of Parliament to the interception, in any form, of their conversations or communications or to the sequestering of their correspondence.

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Rules of Procedure of the Chamber of Deputies
Rule 18

1. The Committee for granting authorisation 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 authorisation. 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, authorising 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.

2a. Before the conclusion of the debate in the Chamber, twenty Deputies may formulate reasoned proposals which differ from the committee's conclusions. If the committee has proposed granting authorisation and no contrary proposals have been formulated, the Chamber shall not hold a vote, since the committee's conclusions shall automatically be considered to have been approved. The Chamber is always called upon to reach a decision on requests for authorisation in respect of coercive measures affecting personal or domiciliary liberty[53].

53 Paragraph added by the Chamber on 20 May 1993.

3. The procedure prescribed in the preceding paragraphs shall also be applicable where the request for authorisation 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 examinations by the Committee on the Rules of Procedure, must be approved by the Chamber in accordance with the procedures described in Rule 16(4).

Rules of Procedure of the Senate

Rule 19 - Committee on Electoral Matters and Parliamentary Immunities[54]

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.

5. It shall also be a matter for the committee to examine the requests for authorisation 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 authorisation to bring proceedings in respect of the offences referred to in Article 96 of the Constitution and on the requests for authorisation 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.

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

Rule 135 - Examination of the requests for authorization to bring proceedings which are submitted under Article 68 of the Constitution [55]

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 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.

55 Rubric amended by the Senate on 7th June 1989.

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 enshrines 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 consideration of requests for waiver of parliamentary immunity.

II. The scope of parliamentary immunity

The *non-liability* of Members of Parliament is total, inasmuch as it extends to all activities of Members '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 Member from being exposed to repressive punishments or pecuniary redress.

Since non-liability covers only opinions expressed and votes cast by a Member of Parliament while carrying out his duties, he may be subject to legal proceedings brought for statements made in a personal capacity outside the Chamber, even if they have been made within the precincts of Parliament. A Member of Parliament may also be subject to legal proceedings brought for opinions expressed by him outside Parliament, such as during public meetings or through the medium of the press, even if those opinions reflect those expressed by him in the House.

As regards Luxembourg's case-law, 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 Member voluntarily leaves the restricted area in which his immunity is assured and takes to the courts, he is placing himself outside the special situation provided for in the Constitution.

  Consequently, if a Member has brought 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 (of Appeal) 25 March 1904. Pas. 8, p. 395).

- 'The sole purpose of parliamentary immunity enshrined in Article 68 of the Constitution is to guarantee and safeguard the Member's person. The article in question is not applicable if the Member is summoned to appear 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 (of Appeal) 12 March 1919. Pas. 10, p. 331).

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

'If the non-liability of the Members of the Chamber of Deputies covers all things relating to their parliamentary conduct, if the carrying out of their 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 Member in the exercise of his political and partisan activities. Outside the House, Members are not covered by non-liability in respect of opinions expressed which clearly relate to his activities as a politician, but which could also be expressed by a non-member of Parliament'.

Inviolability has the effect of suspending measures to deprive the member of individual freedom and legal proceedings not authorised by the Chamber, save in the case of flagrante delicto.

Inviolability covers all acts of the Member of Parliament liable to proceedings under criminal law, save for cases of flagrante delicto. Consequently, during sessions of Parliament, no Member may be subject to legal proceedings, arrested or subject to measures to deprive him of freedom without the authorisation of the Chamber.

It should be noted that inviolability does not prevent action being taken against a Member of Parliament in civil proceedings or for minor offences. In such cases, the law does not actually provide for preventive detention, 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 refer to the follow decision, dating from 1960:

'Any unauthorised act of proceedings against a Member of Parliament, save 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 accuracy 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 Member under the Constitution, which only prohibits proceedings proper' (Court 21 October 1960. Pas. 18, p. 164).

III. The duration of parliamentary immunity

The non-liability of Members of Parliament established by Article 68 of the Constitution is indefinite. It protects the Member of Parliament both during the exercise of his mandate and after expiry thereof.

On the other hand, inviolability (Article 69 of the Constitution), the aim of which is to prevent vexatious actions with regard to Members of Parliament, may only be claimed during 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).

IV. The procedure for waiving parliamentary immunity

Requests for authorisation of proceedings against Members of Parliament may be sent to the Chamber by the Minister for Justice or the Public Prosecutor's department, who forward their requests through the Prime Minister or the alleged injured party or the Member 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 authorisation 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.

That committee informs the Member in question and secures his explanations. The Member may be assisted or represented by one of his colleagues. If the Member 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 considered by the Chamber in closed session.

Voting is by secret ballot, and each Member taking part in the vote may represent an absent colleague by virtue of a written proxy.

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

In the event of rejection of a request for authorisation 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 specific and is valid only in respect of the facts on which the request for the waiving of immunity was based.

V. 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 Member referred to 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 waiver of immunity.

With regard to this last point, the Chamber of Deputies generally considers that, since this is a matter falling within criminal law, it must be ascertained whether the facts constitute first and foremost a disturbance of law and order and of the public interest or whether they affect a particular interest. In the latter case, the particular interest may very easily be defended in a civil court, where parliamentary immunity does not apply, whereas criminal proceedings are at all events only deferred.

Since 1993, two requests for waiver of immunity have been submitted: one was declared inadmissible, the other was granted.

LUXEMBOURG
Relevant legal provisions

Constitution

Article 68

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

Article 69

1. No Member shall, for the duration of the session, be subject to legal proceedings or arrested for a criminal offence without the authorisation of the Chamber, save in the case of *flagrante delicto*.

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

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

Rules of Procedure of the Chamber of Deputies
Chapter 13
Procedure for considering requests for waiver of parliamentary immunity

Rule 159

A special committee shall be set up for each request for authorisation 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 160

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

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

Rule 161

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

Rule 162

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 Member in question or the colleague chosen by him to represent him. If the Member 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 163

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

Rule 164

Voting shall be by secret ballot. Each Member taking part in the vote may represent an absent colleague by virtue of a written proxy.

Rule 165

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

Rule 166

In the event of refusal of a request for authorisation 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

Article 71 of the new Constitution of the Kingdom of the Netherlands ('Grondwet'), which came into force in February 1983, lays down that Members of the States General, Ministers, State Secretaries 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. The scope of parliamentary immunity

The scope of parliamentary immunity extends, in the cases in which it applies, to both civil jurisdiction and criminal jurisdiction. By virtue of immunity, Members of Parliament, (as well as Ministers), may not be 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.

All acts done by Members in the performance of their duties are covered by parliamentary immunity, whether 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 from immunity.

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.

III. The 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.

IV. The procedure for waiving parliamentary immunity

There is no specific procedure for waiver of parliamentary immunity. The immunity provided for in Article 71 of the Constitution does not include any limitation to the conditions required for action to be taken against a Member of Parliament, since it simply establishes his non-liability. Since 1848, the authorisation of Parliament has not been necessary for the bringing of 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 common law. On the other hand, as regards offences committed by Members of Parliament in connection with the performance of their duties, the Supreme Court ('Hoge Raad') is responsible for adjudicating on them.

V. Parliamentary practice

No information available.

NETHERLANDS
Relevant legal provisions

Constitution

Article 71

Members of the States General, Ministers, State Secretaries and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing.

Article 119

Present and former Members of the States General, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Second Chamber.

AUSTRIA

I. The legal basis of parliamentary immunity

Article 57 of the Federal Constitutional Act (B-VG) governs the immunity of the Members of the Nationalrat; Section 10 of the Federal Act on the Rules of Procedure of the Nationalrat (GOG) is essentially the same in content as Article 57 of the B-VG, and Section 80 of the GOG governs procedure in matters relating to immunity.

Pursuant to Article 58 of the B-VG, Members of the Bundesrat enjoy the immunity of Members of the Land Assembly appointing them; Section 5 of the Rules of Procedure of the Bundesrat (GO-BR) is substantively the same as this provision. As, pursuant to Article 96(1) of the B-VG, Members of the Land Assemblies enjoy the same immunity as Members of the Nationalrat, the immunity of the Members of the Bundesrat is essentially the same as that of the Members of the Nationalrat, although in matters relating to inviolability (hereinafter referred to as 'extra-professional immunity') of Members of the Bundesrat, the Land Assembly appointing them or its appropriate committee is competent as regards organisation.

II. The scope of parliamentary immunity

What is known as 'professional immunity' (Article 57(1) of the B-VG) protects Members of Parliament against prosecution before a criminal court, under disciplinary law or by an administrative authority and prevents them from being held to account under civil law for votes they cast and for oral or written statements they make in the exercise of their profession, i.e. while performing their duties as Members of the Nationalrat or Bundesrat; they may be reprimanded for such statements only by parliamentary means (by being called to order or refused leave to speak).

What is known as 'extra-professional immunity' (Article 57(2) to (5) of the B-VG) permits the prosecution of a Member of Parliament by an authority for an offence only if the offence is clearly unrelated to his political activities; even then, however, the Member or one third of the members of the appropriate committee may request a ruling by the appropriate representative body on the existence of a link between the offence and the Member's political activities; where such a request is made, the authority must suspend all action relating to the prosecution until the representative body has given its ruling or for a period of eight weeks. Unless caught in the act of committing a crime, a Member may be arrested only with the consent of the appropriate representative body; the same applies to searches of a Member's premises. Even if a Member is caught in the act of committing a crime, he must be released or the prosecution must be dropped at the request of the representative body or, if it is not in session, of the appropriate committee.

Unlike professional immunity, extra-professional immunity is not a ground for exemption from prosecution but an obstacle to prosecution which lapses with the cessation of the legal status of Member of Parliament. In theory and in parliamentary practice, extra-professional immunity is also an obstacle to action being taken against Members under disciplinary law. It does not, however, afford them any protection against civil proceedings in a court of law.

Nor does the scope of extra-professional immunity prevent a Member from being cross-examined as a witness (provided that he is not the accused); it is debatable whether the immunity of a Member who refuses to give evidence in a case relating to his political activities must be waived before coercive measures (coercive penalties) within the meaning of Sections 159 and 160 of the Code of Criminal Procedure and Section 333 of the Code of Civil Procedure may be imposed.

Professional immunity covers all votes cast and oral and written statements made by Members of the Nationalrat and Bundesrat within the scope of the GOG and GO-BR, i.e. during the proceedings of the plenary Nationalrat and Bundesrat and the committees, during parliamentary inquiries and in written statements recorded in parliamentary documents.

Extra-professional immunity covers acts punishable by a court of law and acts governed by administrative criminal law (and, in theory and practice, acts amenable to prosecution under disciplinary law) provided that they have been committed in connection with the political activities of the Member concerned. In such cases, too, the representative body may, of course, consent to the prosecution of the Member by an authority.

A Member may be arrested only with the consent of the representative body even if the offence is obviously unrelated to his political activities; the only exception to this rule arises where a Member is caught in the act of committing a crime, but even then the representative body may request his release.

III. The duration of parliamentary immunity

Immunity is dependent on membership of the Nationalrat or Bundesrat and therefore ceases with such membership. The special provision in Article 57(6) of the B-VG, whereby immunity, in the case of organs of the Nationalrat continuing to function after the day on which the newly elected Nationalrat first sits, lapses only when they cease to function, concerns the chairmen and members of the Central Committee of the Nationalrat who, pursuant to Section 6 (1) of the GOG, remain in office until the newly elected Nationalrat has elected the new chairmen and new Central Committee.

The period during which extra-professional immunity acts as an obstacle to prosecution is not, pursuant to Section 58(3), point 1, of the Penal Code, included in the limitation periods defined in the Penal Code.

IV. The procedure for waiving parliamentary immunity

Pursuant to Section 80 of the GOG, requests for consent to the prosecution of a Member of Parliament by an authority must be forwarded by the President to the Committee on Immunities for preliminary consideration immediately on receipt. The committee is required to submit a report on such requests to the Nationalrat in time for it to vote on them not later than the penultimate day of the eight-week period for which Article 57(4) of the B-VG provides, after which the Nationalrat is deemed to have given its consent to prosecution by the authority. If the Committee on Immunities does not present its report within the allotted period, the President must put the request for waiver of immunity to the vote not later than the penultimate day of the eight-week period. Periods when the Nationalrat is not in session are not included in the eight-week period.

Communications from authorities concerning the arrest of a Member of Parliament caught in the act of committing a crime must be forwarded to the Committee on Immunities by the President in the

same way; however, the required decision is taken by the committee in place of the Nationalrat when the latter is not in session.

The procedure for waiving the parliamentary immunity of Members of the Bundesrat is defined in the Rules of Procedure of the Land Assemblies which appoint them. As, pursuant to Article 96(1) of the B-VG taken in conjunction with Article 58 of the B-VG, the provisions of the Federal Constitution concerning the immunity of Members of the Nationalrat apply mutatis mutandis to the immunity of Members of the Land Assemblies and thus of Members of the Bundesrat, the procedural requirements are also substantively the same as those set out in the GOG. The provisions concerning periods when parliamentary bodies are not in session are, however, applicable only to the Land Assemblies of the Federal Länder of Salzburg, Styria, Tyrol and Vienna, since only the constitutions of these Länder refer to sittings of the Land Assemblies and thus to periods when they are not in session.

V. Parliamentary practice

A statistical review of the action taken on requests for consent to the prosecution of Members of Parliament by authorities which have been addressed to the Nationalrat since the XVth parliamentary term is attached (see below).

In practice, until the end of the XIXth parliamentary term, where the Nationalrat has identified a link between an act and the political activities of the Member concerned, it has as a rule refused to authorise his prosecution by an authority. In parliamentary practice, by far the largest proportion of requests are received from courts seeking authorisation to prosecute Members on suspicion of defamation as defined in Section 111 of the Penal Code; until the end of the XIXth parliamentary term, the Nationalrat usually decided in such cases not to waive the immunity of the Member concerned; since the beginning of the XXth parliamentary term, it has taken to agreeing to prosecution by an authority in such cases.

The restriction of extra-professional immunity to offences related to the political activities of Members of Parliament as a result of an amendment to the B-VG in 1979 has greatly reduced the number of cases in which immunity is waived since, where it was once regularly decided to waive immunity, in such cases as traffic offences punishable by courts of law or the administrative authorities, a request for waiver of immunity is as a rule no longer required, since such offences are obviously unrelated to Members' political activities.

No statistics are available on the Land Assemblies' treatment of requests for authorisation to prosecute Members of the Bundesrat by authorities.

Cases of immunity, XVth to XXth parliamentary terms and decision of the Nationalrat

Situation as at 12.1.1999

Parliamentary term	Decision of the Nationalrat		Request withdrawn	Request invalid on Member's departure from Nationalrat	Total
	to waive immunity	not to waive immunity			
XVth (5.6.1979-18.5.1983)	1	19	-	-	20
XVIth (19.5.1983-16.12.1986)	-	14	2	-	16
XVIIth (17.12.1986-4.11.1990)	2[56]	37	-	2	41
XVIIIth (5.11.1990-6.11.1994)	1	26	3	1	31
XIXth (7.11.1994-14.1.1996)	1	4	2	1	11[57]
XXth (since 15.1.1996)	133	-	1	-	15[58]

56 Of which one on expiry of the period referred to in Article 74(4) of the B-VG.

57 Of which 3 still pending at the end of the parliamentary term.

58 Two requests for authorisations concerned the same facts and were covered by one decision.

AUSTRIA
Relevant legal provisions

Federal Constitutional Act

Article 57

1. Members of the Nationalrat shall never be called to account for votes cast in the exercise of their mandate and shall be called to account for oral and written statements made in the exercise of this mandate only by the Nationalrat.

2. Members of the Nationalrat may be arrested for an offence only with the consent of the Nationalrat, unless caught in the act of committing a crime. Searches of the premises of Members of the Nationalrat shall also require the consent of the Nationalrat.

3. Members of the Nationalrat may otherwise be prosecuted by an authority for an offence without the consent of the Nationalrat only if the offence is clearly unrelated to their political activities. The authority shall, however, obtain a ruling from the Nationalrat on the existence of a link between the offence and political activities at the request of the Member concerned or one third of the members of the standing committee entrusted with these matters. Where such a request is made, the authority shall immediately refrain from or discontinue any action relating to prosecution.

4. The Nationalrat shall be deemed to have given its consent if it fails to rule within eight weeks on a request from the authority appointed to effect the prosecution; in order that the Nationalrat may give its ruling within the allotted period, the President shall put any such request to the vote not later than the penultimate day of this period, which shall not include periods when the Nationalrat is not in session.

5. If a Member is caught in the act of committing a crime, the authority shall immediately notify the President of the Nationalrat of his arrest. At the request of the Nationalrat or, when it is not in session, of the standing committee entrusted with these matters, the arrested Member shall be released or the prosecution shall be dropped.

6. The immunity of Members shall cease on the day on which the newly elected Nationalrat first sits or, in the case of organs of the Nationalrat continuing to function after this date, on the cessation of this function.

7. More detailed provisions shall be laid down in the Federal Act on the Rules of Procedure of the Nationalrat.

Article 58

The Members of the Bundesrat shall enjoy the immunity of Members of the Land Assembly appointing them while they remain Members of the Bundesrat.

Article 59

No Member of the Nationalrat, of the Bundesrat or of the European Parliament may simultaneously be a Member of either of the other two representative bodies.

Article 96

1. Members of Land Assemblies shall enjoy the same immunity as Members of the Nationalrat; the provisions of Article 57 shall apply mutatis mutandis.

2. The provisions of Articles 32 and 33 shall also apply to the sittings of the Land Assemblies and to the meetings of their committees.

3. Under Land law, an arrangement as provided for in Article 56(2) to (4) may be made for Members of Land Assemblies who resign their seats on being elected to the Bundesrat or to the Land government.

Rules of Procedure of the Nationalrat

II. General rights and obligations of Members

Section 10

1. Members shall never be called to account for votes cast in the exercise of their mandate and shall be called to account for oral and written statements made in the exercise of this mandate only by the Nationalrat.

2. Members may be arrested for an offence only with the consent of the Nationalrat, unless caught in the act of committing a crime. Searches of the premises of Members of the Nationalrat shall also require the consent of the Nationalrat.

3. Members may otherwise be prosecuted by an authority for an offence without the consent of the Nationalrat only if the offence is clearly unrelated to their political activities. The authority shall, however, obtain a ruling from the Nationalrat on the existence of a link between the offence and political activities at the request of the Member concerned or one third of the members of the standing committee entrusted with these matters. Where such a request is made, the authority shall immediately refrain from or discontinue any action relating to prosecution. If the Nationalrat rules that the offence is related to the Member's political activities, it shall at the same time decide whether or not to consent to his prosecution by the authority.

4. The Nationalrat shall be deemed to have given its consent if it fails to rule within eight weeks on a request from the authority appointed to effect the prosecution.

5. If a Member is caught in the act of committing a crime, the authority shall immediately notify the President of the Nationalrat of his arrest. At the request of the Nationalrat or, when it is not in session, of the standing committee entrusted with these matters, the arrested Member shall be released or the prosecution shall be dropped.

6. The immunity of Members shall cease on the day on which the newly elected Nationalrat first sits or, in the case of organs of the Nationalrat continuing to function after this date, on the cessation of this function.

Section 80

1. Requests for consent to the prosecution of a Member by the authorities pursuant to Section 10(2) and (3), first sentence, requests for a ruling on the existence of a link within the meaning of Section 10(3), communications from authorities pursuant to Section 10(5), applications by authorities pursuant to Article 63(2) of the B-VG and requests for authorisation to prosecute persons for defamation of the Nationalrat shall be referred by the President to the standing committee entrusted with these matters (Committee on Immunities) immediately on receipt. The Member concerned shall be informed of requests for consent to prosecution by an authority pursuant to Section 10(3), first sentence, and requests for a ruling on the existence of a link within the meaning of Section 10(3).

2. The committee's preliminary deliberations shall be followed by a debate and vote in accordance with the General Provisions on Proceedings during Sittings of the Nationalrat. In the case of communications from authorities pursuant to Section 10(5), the decision shall be taken by the Committee on Immunities in place of the Nationalrat when the latter is not in session.

3. The committee shall report to the Nationalrat on requests for waiver of immunity in time for the Nationalrat to vote on them not later than the penultimate day of the eight-week period provided for in Section 10(4).

4. If the committee fails to submit its report within the allotted time, the President shall put the request for the waiving of immunity to the vote not later than the penultimate day of the eight-week period.

Rules of Procedure of the Bundesrat

Immunity of Members of the Bundesrat

Section 5

Members of the Bundesrat shall enjoy the immunity of Members of the Land Assembly appointing them while they remain Members of the Bundesrat (Article 58 of the B-VG).

PORTUGAL

I . The legal basis of parliamentary immunity

The basic principles on this subject are embodied in Article 157 of the Constitution of the Portuguese Republic following the revision of the Constitution of 1997 by virtue of Constitutional Law No 1/97, published in the Official Gazette No 218/97 of 20 September [59].

The Rules for Deputies (Law No 7/93 of 1 March 1993 as amended several times) takes over the relevant provisions of the Constitution in Rule 10 (non-liability) and Rule 11 (immunities) but also includes further implementing provisions.

The Rules of Procedure of the Assembly of the Republic[60], in Rule 3 thereof, leave the regulation of this subject to the Rules for Deputies. Rule 38(2) of the Rules of Procedure states that the Parliamentary Ethics Committee is responsible in particular for "(…) g) pronouncing on the waiving of immunities, in accordance with the Rules for Deputies."

II. The scope of parliamentary immunity

Article 157(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'. This provision corresponds to the previous Article 160(1) and has remained has unchanged throughout successive revisions of the Constitution.

Non-liability - Article 157(1) of the Constitution - implies that 'Deputies cannot be liable, as a result of votes and of opinions (expressed in the exercise of their duties) for so-called 'offences of responsibility'[61], or for any others, including 'offences of defamation'[62].

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'[63].

59 This article corresponds to the previous Article 160: a new paragraph 2 has been introduced and the remaining provisions have been slightly amended, with the exception of paragraph 1, which remains unchanged.

60 Resolution of the Assembly No 4/93, Official Gazette, First Series - A. No 51, 2 March 1993, as amended by Resolution No 3/99, of 20 January 1999.

61 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 1987.

62 Gomes Canotilho and Vital Moreira, Constituição da República Portuguesa Anotada, Vol. 2, page 171.

63 Opinion No 5/80, of 21 February 1980, of the Office of the Attorney-General of the Republic

Non-liability covers not only activities in plenary sitting, but also in meetings of parliamentary committees and missions undertaken outside the Assembly of the Republic in the exercise of a parliamentary mandate.

Article 157(3) and (4) of the Constitution sanction so-called inviolability, in the case of the practice of certain acts subject to criminal reprimand and committed by Deputies 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 authorisation from the Assembly of the Republic; (c) where criminal proceedings are initiated against a Deputy, the Assembly is obliged in some cases to suspend his mandate so that he can be tried; (d) the hearing of a Deputy as a witness or indicted person must be preceded by authorisation from the Assembly, but this must be granted in certain circumstances which are considered particularly serious.

According to Article 157(3) of the Constitution, Deputies may be detained or arrested without authorisation from the Assembly only when the following conditions prevail together: detention *in flagrante delicto* in so far as the deed constitutes a premeditated offence punishable by a maximum term of imprisonment of more than three years[64]. 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 authorisation 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[65].

It can be seen from Article 157(4) of the Constitution that a Deputy may be tried only if the Assembly of the Republic suspends him for that purpose. It is decided that, after the definitive charge, the case does not continue if the Deputy is not suspended. The 1997 revision clarified the conditions under which a Member's mandate may be suspended to allow legal proceedings to take their course. The decision always lies with the Assembly, which is, however, obliged to suspend a mandate in the case of a fraud-related offence carrying a maximum prison sentence of over three

64 The revision of the Constitution of 1997 restricts itself to updating the penal framework in accordance with the provisions of Article 27(b) of the Constitution which was introduced by the 1989 revision: it specifies that 'the deed must be a *premeditated* offence punishable by a *maximum* term of imprisonment of more than three years'. Article 27(2) provides that no-one may be totally or partially deprived of liberty, save as a result of a judicial sentence imposed for an act punishable by law by a prison sentence or the judicial application of a security measure'. Paragraph 3 states 'that by way of derogation from this principle, deprival of freedom shall be permitted, for periods of time and under conditions to be stipulated by law, in the following cases: (a) detention in flagrante delito; (b) detention or preventive custody in the event of strong evidence of commission of a premeditated offence carrying a maximum prison sentence of over three years (...)'.

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

years. Even in this case, the Assembly remains responsible for verifying the constitutionally defined precepts[66].

If a mandate is suspended, the suspension may be abrogated in case of a judicial decision entailing a pardon or equivalent or following the completion of the sentence (see Rule 6)(1) (b) of the Rules for Deputies).

Under Rule 11(6) of the Rules for Deputies, the decision of the Assembly not to suspend a Deputy shall automatically have the effect of suspending the limitation period laid down in criminal law in respect of the subject of the charge[67].

Article 157(2) of the Constitution, which was added by the 1997 revision, stipulates that Deputies may not be heard as witnesses or defendants[68] without the authorisation of the Assembly. This authorisation is obligatory in the latter case when there is strong evidence to suggest that a fraud-related offence carrying a maximum prison sentence of over three years has been committed.

A similar provision already existed previously in the Rules for Deputies, but not in the Constitution. As regards this provision, the text of the Constitution currently in force stipulates that authorisation must be granted in serious cases but no longer states that such authorisation is necessary in cases of '*flagrante delicto*'. The recent revision of the Constitution thus clearly includes within the scope of parliamentary immunity the need for authorisation by the Assembly for hearing members to testify or as defendants. However, it excludes circumstances covered by the former Article 161(1) of the Constitution but which are still covered by Rule 14(1) of the present Rules for Deputies: this is the requirement for authorisation by the Assembly before Deputies may be heard as members of the jury, experts or witnesses. Article 154(3) of the Constitution, entitled 'Incompatibilities and impediments', provides that 'the law shall regulate the cases and conditions under which Members shall need the authorisation of the Assembly of the Republic to be members of a jury, mediators, experts or witnesses'. The intention was clearly to separate these situations from the immunity rules, while leaving a certain room for manoeuvre to the legislative authority to regulate in this area. Moreover, the new version no longer links the requirement for authorisation to the period of effective functioning of the Assembly, but it has introduced an impediment relating to the function of mediator (which was not provided for under the previous Article 161(1) of the Constitution).

66 Prior to the 1997 revision, in the event of a Deputy being accused of an offence carrying a prison sentence of over three years, proceedings could continue without the Assembly having to decide to suspend the Deputy in question. The amendment means that, unless it is bound by a compulsory decision to suspend a mandate, the Assembly must always examine the specific case and issue a decision accordingly.

67 'Should the Assembly decide not to suspend a Deputy's mandate, proceedings may not continue. This does not, however, mean that the case is shelved. The development of the case is merely postponed until a subsequent occasion arises [in which the Deputy is suspended for other reasons or his mandate expires]' (Fernando Amaral, in 'Notas e Comentários ao Estatuto dos Deputados', 1995 edition, p. 54).

68 The various types of plaintiff are set out in Articles 57, 58 and 59 of the Code of Penal Procedure.

III. The duration of parliamentary 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 Standing Committee of the Assembly - Article 179(3)(b) of the Constitution).

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

In the case of Article 157(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.

IV. The procedure for waiving parliamentary immunity

The committee responsible for matters relating to immunity is currently the Parliamentary Ethics Committee.

For the purposes of this opinion, the President of the Assembly of the Republic refers to this committee requests for authorisations pursuant to Article 157 of the Constitution received from the competent authorities, as well as any accompanying supporting documents[69].

Under Rule 11(4) of the Rules for Deputies, the authorisation shall be requested by the judge in a document addressed to the President of the Assembly of the Republic.

The Rules of Procedure of the Assembly do not contain any specific provisions stipulating different treatment for the organisation of the committee's tasks relating to the examination of requests for the waiving of parliamentary immunity.

Meetings of the committee are not public (nor are those of the other parliamentary committees) unless otherwise stipulated (Rule 120 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 then subject to discussion and approval.

Decisions on requests for the waiving of parliamentary immunity (or any others relating to deputies' mandates) are included by the President of the Assembly in part 1 of the agenda for plenary sessions (Rules 64 of the Rules of Procedure). The committee's opinion is passed on to the plenary session, as is the general result of the vote on it in committee.

69 'In criminal proceedings in which the indictment specifies the nature of the crime committed (...), the relevant tribunal shall communicate to the President of the Assembly of the Republic the stage the proceedings have reached, and the legal framework of the act or acts which gave rise to the indictment, in order to establish whether the Assembly intends to suspend the deputy in question'. (Fernando Amaral, Notes and Commentaries on the Rules for Deputies, 1995, page 53).

The decision of the plenary session on the granting of authorisation for the arrest of a Deputy, or on the suspension or otherwise of his parliamentary mandate, for the purposes of continuing with the proceedings, is taken by secret ballot and by an absolute majority of Deputies present (Rule 11(5) of the Rules for Deputies). The same type of vote is used to authorise a deputy to make a statement as declarant or a defendant.

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 desirability 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.

V. Parliamentary practice

The Assembly of the Republic (which, moreover, appears always to have abided by the opinions on this subject of the competent committee) applies an extremely broad concept of parliamentary immunity, and there is a predominant, if not unanimous, understanding that the waiving thereof may be authorised only in exceptional cases. This conclusion is clearly corroborated by the Assembly's practice on this subject: according to the information available[70], the decision has never been made to this day, in accordance with the former Article 160 (now Article 157) of the Constitution, to suspend any Deputy's mandate.

As regards the definition of exceptional cases, in other words, cases in which waiving of immunity would be justified, parliamentary precedent does not seem to be particularly well developed and is not sufficiently systematised. However, from various opinions of the committee concerned which received a favourable vote in plenary, it seems 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 *'fumus persecutionis'* is considered insufficient and dangerous, in so far 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 (bringing the Assembly into disrepute or urgent need for evaluation in court).

70 It has not been possible to obtain official statistics on this subject.

On certain specific aspects:

(a) Rule 14 of the Rules for Deputies.

Rule 14 of the Rules for Deputies, under the heading 'Duties of Deputies', establishes that 'Deputies may not, without the authorisation of the Assembly, be jurors, experts or witnesses'.

This principle has long been interpreted as embodying not an immunity, but rather a right or guarantee given to the Deputy in the sense that it would enable him to carry out his duties in a regular, normal way[71]. It was a right which he could renounce. The new version of the Constitution clearly excludes such circumstances from the scope of immunity and also from the field of rights and privileges, including them instead under 'incompatibilities and impediments' (Article 154(1)). The need for authorisation by the Assembly in these circumstances is no longer enshrined in the Constitution, but is regulated by ordinary law.

According to the procedure normally employed, when the application has been made (by means of a document sent by the judge or by the investigating authority to the President of the Assembly of the Republic - Rule 14(3) of the Rules for Deputies), it is considered by the competent committee, which, having heard the Member of Parliament concerned (the hearing is compulsory under Rule 14(3) of the Rules for Deputies), proposes in the light of the wishes expressed by the Member of Parliament that the application be either accepted or rejected. The relevant committee thus proposes to the Assembly of the Republic that it grant or refuse the Member of Parliament permission to testify as a witness in the light of the Members' wishes. When the opinion has been drawn up it is presented in plenary, where it is adopted by members standing or remaining seated (Rule103(c) of the Rules of Procedure of the Assembly of the Republic) except if the Member is indicted[72]. In practice the Assembly always adopts the opinion of the relevant committee.

Under Rule 15(1) of the Rules for Deputies, the fact that a Member of Parliament is prevented by the fact that he is at a meeting or on mission in connection with his mandate as a member of the Assembly from complying with documents or measures taken by an official body other than the Assembly is always sufficient reason for those documents or measures to be postponed, with no expense to the Member of Parliament. However, a Member may not use this argument more than once in the case of any given document or measure.

In accordance with Article 139(1) of the Code of Civil Procedure, all the immunities and privileges laid down by the law concerning the obligation to testify and the manner and place of testifying also apply in criminal cases.

In accordance with Article 624(2) of the Code of Civil Procedure, it is the prerogative of Members of Parliament, in their capacity of members of a sovereign body, to testify initially in writing if they so wish. When a Member of Parliament is summoned as a witness he is informed of this by the court, as well as of the matters on which he is required to testify (Article 626(2) of the Code of Civil Procedure).

71 See Annex III of the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities of the European Parliament on the requests for authorisation to hear Mr Mendes Bota, MEP (Doc A3-112/91, rapporteur: Mr Gil-Robles).

72 In this case voting shall be by secret ballot and absolute majority – Rule 105(b) of the Rules of Procedure of the Assembly of the Republic.

If the Member chooses to testify in writing, he forwards a sworn statement relating what he knows about the matter at issue to the relevant court within ten days of the date of the notification referred to above. The court or any one of the parties involved may, once only, ask for clarification, also in writing, to be provided within 10 days (Article 626(3) of the Code of Civil Procedure). The party who has named the witness can ask for him to be heard in the court on the grounds that this is necessary in order to elicit all the facts pertaining to the case; a decision on this request is taken by the judge, with no possibility of appeal (Article 626(4) of the Code of Civil Procedure). If the witness does not provide the statement referred to in Article 626(3) of the Code of Civil Procedure, if he has failed to do so within the prescribed time-limit or if the judge deems his presence to be necessary, the witness himself is informed that he must testify in court (Article 626(5) of the Code of Civil Procedure). In this case the judge of the court concerned must apply for authorisation from the President of the Assembly of the Republic for the Member of Parliament to appear in court. This decision is taken by the Assembly of the Republic[73].

(b) Misdemeanours

Article 157(4) of the Constitution requires the authorisation of the Assembly (and the suspension of the Member's mandate) for the continuance of proceedings when 'criminal proceedings' 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 authorisation[74],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 relevant committee (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 authorisation 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 authorisation is necessary, then logically such authorisation 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 competent Committee) has been not normally to authorise 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 authorisation is granted, it has been understood that the suspension of the Deputy's mandate is not necessary ('if the situations set out in Rule 14(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').

73 Cf. Amaral, Fernando, op. cit., p.66.

74 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), second series, No 99, 29 April 1988.

PORTUGAL
Relevant legal provisions

Constitution

Article 157
(Immunities)

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. Deputies may not be heard as declarants or defendants without the authorisation of the Assembly; such authorisation shall be compulsory in the latter case where there is strong evidence that a premeditated offence has been committed and that offence is punishable by a term of imprisonment not less than three years.

3. No Deputy may be detained or arrested without the authorisation of the Assembly, other than for a premeditated offence punishable by the term of imprisonment specified in paragraph 2, if apprehended in *flagrante delicto*.

4. Where criminal proceedings have been instituted against any Deputy and definitive charges has been brought against him, the Assembly, save where the offence is punishable by the term of imprisonment referred to in the preceding paragraph, shall determine whether he should be suspended for the purposes of continuing the proceedings.

Article 154
(Incompatibilities and impediments)

1. (...)

2. (...)

3. The cases where and the conditions under which Deputies shall not be required to obtain the authorisation of the Assembly to serve as jurors, arbitrators, experts, or witnesses shall be laid down by law.

Rules for Deputies

(Law No 7/93 of 1 March 1993, as amended by Laws Nos 24/95, of 18 August 1995, 55/98, of 18 August 1998, 8/99, of 10 February 1999, and 45/99, of 16 June 1999)

Rule 10
(non-liability)

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

Rule 11
(immunities)

1. No Deputy may be detained or arrested without the authorisation of the Assembly, other than for a premeditated offence punishable by a term of imprisonment not less than three years if apprehended in *flagrante delicto.*

2. Deputies may not be heard as declarants or defendants without the authorisation of the Assembly; such authorisation shall be compulsory in the latter case where there is strong evidence that a premeditated offence has been committed and that offence is punishable by a term of imprisonment not less than three years.

3. Where criminal proceedings have been instituted against a Deputy and final charges brought against him, the Assembly shall decide whether to suspend him to enable the proceedings to continue, subject to the following conditions:

(a) Suspension shall be mandatory where the crime in question is of the type referred to in paragraph 1;

(b) The Assembly may suspend the Deputy for no longer than the time considered necessary, depending on the circumstances, for the exercise of his office and the conduct of the criminal proceedings.

4. The authorisation referred to in the preceding paragraphs shall be requested by the judge having jurisdiction in a document addressed to the President of the Assembly of the Republic.

5. Decisions within the meaning of this Rule shall be taken by secret ballot by an absolute majority of the Deputies present, after obtaining the opinion of the appropriate committee.

6. The decision of the Assembly not to suspend a Deputy shall automatically have the effect of suspending the limitation period laid down in criminal law in respect of the subject of the charge.

Rule 14

(Duties of Deputies)

1. Deputies may not serve as jurors or appear as experts or witnesses without the authorisation of the Assembly.

2. Deputies shall require the authorisation of the Assembly to arbitrate in proceedings to which one of the parties is the State or any other public corporation..

3. The authorisation referred to in paragraph 1 shall be requested by the judge having jurisdiction, or the investigating authority, in a document addressed to the President of the Assembly of the Republic. The Deputy concerned shall be heard before the decision is taken.

Rule 15
(Rights of Deputies)

1. The fact that a Deputy is prevented by the fact that he is at a meeting or on mission in connection with his mandate as a Deputy of the Assembly from complying with documents or measures taken by an official body other than the Assembly is always sufficient reason for those documents or measures to be postponed, with no expense to the Deputy, but this principle may not be invoked more than once in the case of any given official document or measure.

2. If a Deputy is attending a course or any official training the most favourable of the provisions pertaining to other situations shall apply as far as lectures and exams are concerned.

"(…)"

FINLAND

I. The legal basis of parliamentary immunity

The immunity of Members of Parliament is enshrined in the Parliament Act which, with the Constitution Act, is one of the central fundamental laws of Finland[75].

Section 13 of the Parliament Act contains the basic rule that Members of Parliament are subject to only limited legal liability for their actions as Members. To obtain a correct picture of the position of a Member in office, it is necessary to consider also Section 58 of the Parliament Act, which sets a standard for parliamentary conduct and contains sanctions in the case of infringements. The relation between sections 13 and 58 is, roughly speaking, that Section 13 guarantees Members a measure of immunity against outside interference and thus their freedom of speech and action, whereas Section 58 imposes a measure of responsibility for the maintenance of good order within the House.

Section 14 of the Parliament Act guarantees Members enhanced protection in criminal proceedings.

II. The scope of parliamentary immunity

The limited liability of Members (Sect. 13) implies protection against prosecution and arrest or detention.

The limited liability of Members applies to opinions expressed in Parliament and to actions taken during proceedings. The section thus applies only to criminal acts committed at Parliament that are linked to the functions of a Member and the transaction of parliamentary business. Other crimes committed by Members can be prosecuted as if they had been committed by any other person; the permission of Parliament is not required.

Section 58 should be recalled in this connection. This section requires a Member to conduct himself seriously and with dignity and not to use offensive, derisive or otherwise improper language about the government or private persons. It is the duty of the Speaker to ensure that these provisions are obeyed. Initially, the Speaker may remark on unsuitable behaviour. If this is insufficient, the Speaker may forbid the offender to speak. Parliament shall decide whether the offender shall receive a formal caution from the Speaker or be suspended from parliamentary sessions for a maximum of two weeks. As an extreme measure, the Parliament Act mentions prosecution in a court of law.

The enhanced protection of Members in criminal proceedings (Sect.14) prevents the arrest or the imposition of travel bans on Members until criminal proceedings have commenced in court. Once proceedings have begun, the competent court may impose detention or a travel ban without the consent of Parliament. It should be noted that if a Member is sentenced to a term of imprisonment, Section 14 does not give protection against the carrying-out of that sentence. In respect of criminal sanctions, Members are in the same position as any other citizen.

75 See annex on the reform of Finnish fundamental laws.

The enhanced protection of Members in criminal proceedings (Sect. 14) relates to the office of member generally. It thus applies both to activities in Parliament and to other conduct. This protection does not, however, apply if a Member has been apprehended in the act of committing a crime for which the minimum penalty is imprisonment for not less than six months.

III. The duration of parliamentary immunity

The limited liability of Members for activities in Parliament (Sect. 13) continues after the end of the parliamentary mandate.

The enhanced protection of Members in criminal proceedings (Sect. 14) is linked to the Member's function. It does not apply after the end of the parliamentary mandate.

IV. The procedure for waiving parliamentary immunity

The protection offered by the limited liability of Members can be waived by Parliament. A qualified majority of five sixths of the Members voting is required.

A waiver may be requested by a public official or other party having the right to prosecute or demand prosecution. The request shall be made in writing, addressed to Parliament or to the Speaker and be forwarded to the Parliamentary Office. The Speaker shall examine whether the party making the request has the right to prosecute or demand prosecution, and that the intended prosecution concerns the Member's official actions. Parliament does not examine the question of guilt; this is up to the courts. There are no binding rules concerning when Parliament shall give its consent to prosecution of a Member. The decisive question is whether the intended prosecution is of such a nature that there is a public or private interest to refer the matter to the courts.

The enhanced protection of Members in criminal proceedings (Sect. 14) may be waived with the consent of Parliament. A simple majority is required. A waiver may be requested by the competent official, e.g. a senior police-officer, a public prosecutor or, in the case of detention on remand, the competent court.

V. Parliamentary practice

Parliament's consent to prosecution has occasionally been sought.

Mostly, Parliament has deemed the requests manifestly unfounded and has rejected them without referral to committee. As far as could be established, three such requests have been forwarded to the Constitution Committee for consideration. In all three cases, Parliament ultimately denied the request.

In the first case (1932) the Constitution Committee recommended that consent to prosecution be granted. However, the required five-sixths majority was not achieved in plenary session. The case was raised by a group of prison guards who claimed that a Member's question to the Government was defamatory and wished to prosecute the signatory to the question. In the later cases (1947 and 1979), certain businessmen claimed that their interests had been hurt by defamatory statements in Parliament.

Section 14 of the Parliament Act has been applied only in the case of arrests or detention undertaken in times of political crisis.

* *

Reform of Finnish fundamental laws

The Finnish Constitution is in the process of reform. The Government has tabled a bill in Parliament (Government Bill 1/1998) with a view to replacing the four fundamental laws with a single law. The Eduskunta's Constitution Committee has drawn up a report on the bill (Constitution Committee report 10/1998). Parliament, meeting in plenary sitting, debated and adopted the text at third reading on 12 February 1999. Before the law can be finally passed, it will have to be considered by the Parliament resulting from the March 1999 election and, in order to be adopted, will require a two-thirds majority of the votes cast. In addition, entry into force of the new fundamental law, *scheduled for 1 March 1999*, is subject to promulgation of the text by the State President.

The principles of parliamentary immunity remain unchanged in the new draft fundamental law. The provisions of the existing Sections 13 and 14 of the Parliament Act have been grouped together in Section 30 of the new draft fundamental law. Barring small changes, the wording is almost identical. The existing Section 58 of the Parliament Act, governing the conduct of Members at sittings, has hardly been altered in substance. It is now Section 31 of the new fundamental law. The above-mentioned sections of the draft law are reproduced below:

Section 30 – *Parliamentary immunity*

No representative may be prevented from performing his duties.

No representative may be prosecuted or detained on account of opinions expressed or of his conduct during debates in Parliament, unless Parliament decides otherwise by a majority of at least five sixths of the votes cast.

The Speaker of Parliament shall immediately be informed of the arrest and detention of a representative. No representative may be arrested or detained before the start of a trial without the authorisation of Parliament unless he is suspected on reliable grounds of committing an offence carrying a minimum penalty of six months' imprisonment.

Section 31 – *Freedom of expression and conduct of Members at sittings*

Representatives shall be entitled to express their views freely in Parliament on all matters debated and on the procedures for such debate.

Representatives must behave calmly and with dignity and refrain from offending any person whatsoever. If a representative infringes that rule, the Speaker may call him to order or forbid him to continue his speech. Should he repeatedly infringe the rule, Parliament may reprimand him or ban him from its sittings for not less than two weeks.

FINLAND
Relevant legal provisions

Parliament Act

Section 13 (3 November 1944/771)

(…)

No representative shall be indicted or deprived of his liberty on the grounds of the opinions which he has expressed in Parliament or of his conduct otherwise in the consideration of any business, unless Parliament has consented to this by a decision supported by no fewer than five sixths of the votes cast.

Section 14

A representative may not be apprehended, detained or subjected to a travel ban without the consent of Parliament before the charges against him have been taken up for consideration, unless he has been caught in the act of committing an offence for which the minimum penalty is a period of imprisonment no shorter than six months.

The Speaker shall be immediately informed of the apprehension and detention of a representative.

(…)

Section 58

A representative shall conduct himself seriously and with dignity. No one shall use offensive, derisive or otherwise improper language about the Government or private persons. If someone infringes this provision, the Speaker shall call him to order, and if he fails to heed the call, the Speaker shall deny him the floor. Otherwise it shall be for Parliament to investigate whether a representative who has contravened the order is to be admonished and warned by the Speaker or banned from attending the sittings of Parliament for a fixed period not exceeding two weeks, or whether charges are to be brought against him in a court of law, or whether the matter shall be allowed to lapse.

SWEDEN

I. The legal basis of parliamentary immunity

The provisions governing immunity of Members of the *Riksdag* are laid down in Chapter 4, Article 8, of the Constitution. The first paragraph provides for limited immunity in regard to statements and actions by Members of Parliament in the performance of their duties. The second paragraph provides for limited immunity, should Members of Parliament commit an offence as private individuals, i.e. outside their duties as Members of Parliament.

The third paragraph of Chapter 4, Article 9, extends this protection to alternate Members performing duties as Members. The second paragraph of Chapter 4, Article 9, also extends the protection laid down in Article 8, first paragraph, to the Speaker of the *Riksdag*.

The procedure for securing the *Riksdag*'s consent to the prosecution of a Member of Parliament is laid down in Chapter 3, Article 18, of the Rules of Procedure. A Member of Parliament who has committed an offence may be removed from office by decision of a court.

Chapter 9, Article 8, of the Rules of Procedure sets out the provisions on legal proceedings against members of certain *Riksdag* bodies.

II. The scope of parliamentary immunity

The first paragraph of Chapter 4, Article 8, of the Constitution confers a degree of immunity on Members of Parliament in regard to statements made or actions performed in the performance of their duties.

Immunity means that the *Riksdag*'s prior consent is required before legal proceedings may be taken against Members of Parliament. Without that consent, no one may deprive them of their freedom or prevent them from travelling within the country.

The limited immunity referred to in the first paragraph seeks, in particular, to safeguard Members' freedom of expression in the Chamber as well as their independence in parliamentary work in general. Besides the debates in the Chamber, the *Riksdag*'s work is carried out in other parliamentary bodies. What determines the scope of immunity is the link between the activity in the particular body concerned and actual parliamentary work. The relevant *Riksdag*'s bodies include committees, the Electoral Committee, the delegation formed in the event of war, the Speaker's Procedural Committee and the Advisory Council on Foreign Affairs, but not the *Riksdag* Board of Administration, the *Riksdag*'s Auditors or Trustees of the Bank of Sweden. Nor do the relevant bodies include the Election Review Committee, the *Riksdag* Complaints Board or the national debt commissioners. Special provisions governing legal proceedings against Members in the latter category are laid down in Chapter 9, Article 8, of the Rules of Procedure (see below).

The second and third paragraphs of Chapter 4, Article 9, of the Constitution stipulate that the Speaker also has immunity with respect to his duties and that this also applies to alternate Members performing the duties of a Member.

The second paragraph of Chapter 4, Article 8, of the Constitution concerns limited immunity enjoyed by a Member who has committed a minor offence as a private individual, i.e. outside his duties as a Member of Parliament. The penalty for the offence must be less than two years' imprisonment. It is also assumed that the Member of Parliament does not admit the offence and is not caught in the act.

The immunity enjoyed by a Member does not extend to prosecution or court proceedings but only covers deprivation of freedom such as arrest or detention on remand. Accordingly, a Member of Parliament may be summoned for questioning during a preliminary hearing or to a court or be banned from travelling abroad. A court sentence involving a term of imprisonment may also be executed.

Members of Parliament may be removed from office if they have, by virtue of a criminal act, proved themselves manifestly unfit to hold such office. Pursuant to Chapter 4, Article 7, of the Constitution, any decision to this effect shall be taken by a court of law.

The second paragraph of Chapter 4, Article 8, seeks to protect Members of Parliament, particularly in times of unrest, against ill-considered and less than well-founded intervention by the authorities, particularly one that might be politically motivated.

As the aim is not to strengthen the position of Members of Parliament in the performance of their duties but to forestall interventions that prevent them, in purely physical terms, from carrying out their duties, immunity does not extend to individuals who have been but are no longer Members of the *Riksdag*.

However, where Members of Parliament are suspected of having committed a minor offence, they may be taken into custody or arrested if they admit the offence or are caught in the act.

There is, in formal terms, no specific immunity against Members' being detained on social or medical grounds. Of course, the first paragraph of Chapter 4, Article 8, of the Constitution prohibits the detention of Members of Parliament on the grounds of something that they have said or done in the performance of their duties, even where there may be other grounds in law for doing so.

However, no Members of Parliament may invoke this provision in order to refuse to comply with their duty to appear as a party to legal proceedings or as a witness in court.

The first paragraph of Chapter 9, Article 8, of the Rules of Procedure provides that legal proceedings against a Trustee of the Bank of Sweden or any of the Auditors of the *Riksdag* shall be decided by the Finance Committee. A decision to take proceedings against a Member of the *Riksdag*'s Board of Administration, the Election Review Committee or the *Riksdag* Appeals Board may be taken only by the Committee on the Constitution. Pursuant to the second paragraph, the *Riksdag* may direct that a decision to take legal proceedings against a Member of Parliament who is also a Trustee of the Bank of Sweden shall not be taken by the Finance Committee if the offence was committed in dealing with a matter concerning the import or export of foreign currency.

The scope of the protection afforded by the immunity referred to in the first paragraph of Chapter 4, Article 8, of the Constitution compared with the second paragraph may be defined as follows: if, in a speech to the Chamber, a Member of Parliament discloses information which has been entrusted to the Member in a committee and which the Member is required to keep secret, legal proceedings may be taken only if the Chamber gives its consent by a qualified majority.

Should the Member divulge the same information in conversation, for example, with a visitor to the *Riksdag* or in his work within his political party, the *Riksdag*'s permission is then not required for legal proceedings to be instituted.

III. The duration of parliamentary immunity

As regards the immunity referred to in the *first paragraph* of Chapter 4, Article 8, of the Constitution, the consent of the *Riksdag* is required even if the Member has left the *Riksdag* when the matter arises.

As the limited immunity provided for in the *second paragraph* of Chapter 4, Article 8, of the Constitution seeks solely to forestall interventions which physically prevent Members of Parliament from carrying out their duties, it does not apply to anyone who has been, but is no longer, a Member of the *Riksdag*.

IV. The procedure for waiving parliamentary immunity

Pursuant to Chapter 4, Article 8 of the Constitution, waiver of immunity requires a decision by the *Riksdag* taken by qualified majority, i.e. at least five-sixths of the votes cast.

Chapter 3, Article 18 of the Rules of Procedure lays down the procedure for implementing the *Riksdag's* consent to waive a Member's immunity pursuant to the first paragraph of Chapter 4, Article 8,. A prosecutor or any other party who wishes to initiate court proceedings as a result of acts committed by a Member of Parliament must make a written application to the Speaker to this effect. Proceedings shall then be instituted in a public court.

V. Parliamentary practice

In the spring of 1994, a prosecutor applied for the *Riksdag*'s consent, pursuant to the first paragraph of Chapter 4, Article 8, of the Constitution, to bring a court action against a Member of Parliament for corruption in the performance his duties as a Member of Parliament. The Member had received payment through a company owned by him from another company. The prosecutor claimed that the payment constituted improper remuneration for services which were part of his duties as a Member of Parliament or were connected with those duties.

The *Riksdag* ruled that the provisions governing parliamentary immunity conferred a special status on Members and that the notion of 'performance of the duties as a Member of Parliament' should therefore be interpreted restrictively and be confined to Members' activities in the Chamber and other *Riksdag* bodies directly connected with the *Riksdag*. The offence in question was not considered to have been committed in that context. The *Riksdag* was, therefore, not required to give authorisation.

In other respects, the issue of waiving parliamentary immunity has not arisen, either during the single-chamber system which was introduced in 1971 or the two-chamber *Riksdag* which replaced the Diet of the Four Estates in 1865.

SWEDEN
Relevant legal provisions

Constitution

Chapter 4

Article 7

No Member of the Riksdag or alternate Member may resign without the Riksdag's consent.

Where grounds exist, the Election Review Committee shall examine on its own initiative whether a particular Member or alternate Member is competent under the provisions of Chapter 3, Article 10. Any person declared incompetent shall be removed from office.

A Member or alternate Member may be removed from office in cases other than those referred to in the preceding paragraph only if, by reason of a criminal act, he has proved himself manifestly unfit for office. Any decision to this effect shall be taken by a court of law.

Article 8

No one may bring an action against any person who holds office, or has held office, as a Member of the Riksdag, deprive him of his freedom or prevent him from travelling within the country, on the grounds of his actions or statements made in the performance of his duties, unless the Riksdag has given its prior consent by means of a decision secured by a majority of five-sixths of the votes cast.

If, in any other case, a Member of the Riksdag is suspected of having committed a criminal act, the relevant provisions of law relating to arrest or detention on remand shall be applicable only if he admits guilt or was caught in the act, or if the minimum penalty for the crime is not less than two years' imprisonment.

Article 9

While a Member of the Riksdag is acting as Speaker of the Riksdag or as a member of the Government, his duties as a Member of the Riksdag shall be performed by an alternate Member. The Riksdag may stipulate in the Rules of Procedure that an alternate Member shall replace a Member of the Riksdag where the latter's seat becomes vacant.

The provisions of Article 6 and Article 8, first paragraph, regarding the immunity of a Member in the performance of his duties shall similarly apply to the Speaker and his duties.

The provisions relating to Members of the Riksdag shall also apply to alternate Members performing duties as a Member.

Rules of Procedure of the Riksdag[76]

Chapter 3

Article 18

Where a prosecutor, referring to the first paragraph of Chapter 4, Article 8, of the Constitution, seeks to prosecute a Member of the Riksdag or to deprive him of his personal freedom, the prosecutor shall make a written application to the Speaker for authorisation. The above provisions concerning prosecutors shall also apply to any other person who calls upon the Riksdag to give its consent to the prosecution of a Member of the Riksdag on grounds of his conduct.

If the document of application is so incomplete that it cannot be put before the Riksdag for consideration, or if the applicant has not demonstrated that he has grounds for taking such action or requesting that it be taken by an authority, the Speaker shall reject the application. In all other cases, he shall announce the matter at a meeting of the Chamber.

Chapter 9

Article 8

A decision may be taken to institute proceedings against an office holder named below for an offence committed in the performance of his duties:

1. in the case of legal proceedings against a Trustee of the Bank of Sweden or any of the Auditors of the Riksdag, only by the Finance Committee;

2. in the case of legal proceedings against a member of the Riksdag Board of Administration, the Election Review Committee, or the Riksdag Complaints Board, or against a parliamentary Ombudsman or the Clerk of the Chamber, only by the Committee on the Constitution.

The Riksdag may direct that the provisions of the first paragraph on a decision to institute legal proceedings against a Trustee of the Bank of Sweden shall not be applied in respect of an offence committed in dealing with a matter concerning the import or export of foreign currency.

76 This includes the amendments published in the Swedisth Official Gazette up to and including 1994 (1994, col. 1652).

UNITED KINGDOM

I. The legal basis of parliamentary immunity

The legal basis of parliamentary legal privilege (immunity) is to be found partly in customary law, and partly in statute. Parliamentary privilege exists to protect the institution of Parliament and the rights of its citizens to be properly represented there. No privilege attaches to individual Members of Parliament as such. A central privilege, claimed as long ago as the fifteenth century, is that of freedom of speech in debate. This freedom is guaranteed by statute law, the Bill of Rights 1689. This statute also prevents the courts from examining judicially any other proceeding in Parliament (the term 'proceeding' being narrowly defined, see below), and a Member is not liable in the courts for what he says or does in proceedings. The two Houses also have exclusive jurisdiction over their own procedures which, under long established customary law, cannot be examined elsewhere. The immunity of the institution of Parliament has been accepted by the courts to a surprisingly broad extent: for example, in R v Graham Campbell ex parte Herbert [1935 1 KB 594], the court refused to hear a complaint regarding the sale of alcohol in the precincts of Parliament without the licence required by the law on the grounds that the matter fell within Parliament's exclusive jurisdiction.

II. The scope of parliamentary immunity

As will be seen from Section I above, the scope of parliamentary privilege is predominantly related to providing absolute legal protection for the debates and proceedings of Parliament.

Individual Members of Parliament do not have, and never have had, any immunity from the operation of criminal law. There is no concept whatever of waiver of any supposed immunity. The ancient right of 'freedom from arrest' which is more ancient than 'freedom of speech' originally prevented impecunious Members or their servants being impleaded in the courts for civil debt. Nowadays, it merely prevents a Member from being imprisoned for a civil offence; however, since imprisonment for such offences is largely obsolete, so is the relevance of the privilege. An associated privilege is still significant, however. A Member cannot be summoned to appear in any court as a witness in any action whether civil or criminal (see below). In practice, Members seldom insist on exercising this right.

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 (exercisable by customary law), and the right to publish papers without fear of an action for defamation (exercisable by statute).

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'[77]. 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.

In contrast, a Member is treated 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[78]. 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.

The immunity that extends to Members also extends to other participants in proceedings such as witnesses, counsel and petitioners.

Criminal activities have never been and are not protected by privilege (see above), even if they occur within the precincts of Parliament. In 1815, the Commons Committee of Privileges reported that the arrest of a Member in the Chamber of the House of Commons (at a time when the House had not been sitting) had not violated parliamentary privilege since he had been convicted of an indictable offence[79]. Moreover, the current Standing Orders of the House of Lords, which state that 'no Lord of Parliament is to be imprisoned or restrained without sentence or order of the House', except arrest or detention on any criminal charge[80]. Both Houses have, however, retained the right to be informed of the detention of any Member.

There is no protection of privilege for a Member who has committed a contempt in another court. Detention of a Member under emergency powers legislation passed in time of war has been held not to be a breach of the House's privileges[81].

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

78 This is the principle that an appropriate use of material by a proper person should not open the way for court proceedings - so, for example, a Member who privately raised concerns about conduct within a prison with the proper authorities would not be sued for defamation or, if sued, would be able to have the action struck out.

79 CJ 1814-16, 186.

80 House of Lords Standing Orders Relating to Public Business, number 79, agreed 1 June 1954.

81 Report from the Committee of Privileges HC (1939-40) 164: Case of Captain Ramsay.

III. The duration of parliamentary immunity

The main privileges of freedom of speech and exclusive jurisdiction and the power to punish for contempt extend throughout the life of a Parliament.

IV. The procedure for waiving parliamentary immunity

Until recently, there was no provision for disapplying or waiving a statutory privilege. However, under section 13 of the Defamation Act 1996, a person whose conduct in relation to proceedings in Parliament is in issue in defamation proceedings may waive for the purposes of those proceedings, so far as concerns him, the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place outside Parliament.

Either House may waive a non-statutory privilege: for example, Parliament may be petitioned to allow the production in court of evidence taken by a Committee which has not been published. However, the House would not have power to permit such evidence to be 'impeached' or 'questioned', since this would be contrary to statute law: Article 9 of the Bill of Rights.

No privilege attaches to the personal actions of a Member except when these form part of proceedings. The issue of such waiver does not therefore arise.

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.

Offences against 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 obstruct 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). The courts recognise and accept the authority of Parliament to punish for recognised contempts.

V. 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 by 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, Parliament's contempt powers are nowadays exercised with considerable restraint.

The last imprisonment by the Commons of a Member (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 30 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 party political 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 the courts would probably have taken whatever the House resolved (neither House can extend its privileges except by statute). 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.

UNITED KINGDOM
Relevant legal provisions

'The privileges enjoyed by the United Kingdom Parliament and its Members derive from the functions of Parliament within the constitutional structure of the United Kingdom. The United Kingdom constitution is renowned for the fact that it has gradually emerged over centuries of custom and practice. As a consequence, the privileges and immunities of Parliament, like the rest of the law and practice of the constitution, have never been set out in one document, but are to be found among various Acts of Parliament, resolutions of both Houses of Parliament, decisions of the courts and long-established, and therefore well recognised, conventions and practices. Moreover, the privileges of Parliament are peculiar to this constitutional history and reflect the particular constitutional relationships which have gradually evolved between the Crown, the two Houses of Parliament and the courts'[82].

Thus, some privileges rest solely on the law and custom of Parliament, while others have been defined by statute. Relevant statutes include those provisions still in force of the *Privilege of Parliament Act* 1512 (which established the privileged position of the Commons against inferior courts, as a full partner in Parliament); the *House of Lords Precedence Act* 1539; the Bill of Rights 1689; the Claim of Right 1689; the *Parliamentary Privilege Act* 1737; the *Parliamentary Privilege Act* 1770; the *Parliamentary Oaths Act* 1866; the *Parliamentary Witnesses Oaths Act* 1871; the *Peerage Act* 1963 and the *House of Commons Disqualification Act* 1975.

82 Eighth report from the House of Lords European Communities Committee, session 1985-86 (HL 105), page 56.

III. COMPARATIVE SUMMARY[83]

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, Ireland[84], and the Netherlands immunity is recognised mainly if not only in the form of non-liability; all the other Member States recognise 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 for acts committed in the performance of Members' duties. In general, Members of Parliament are not liable in civil or criminal terms for the acts encompassed within this form 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 contains a more explicit provision to the effect that 'No Member of Parliament shall be subject to legal proceedings, investigations, arrest, detention or judgment'. The Italian Constitution stipulates that 'Members of Parliament may not be made answerable'. The Portuguese Constitution states that 'Deputies shall not be liable under civil, criminal or disciplinary law'.

The protection against public penalties afforded by non-liability does not, however, exclude Members 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.

83 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. A set of comparative tables supplements these brief general conclusions.

84 In Ireland, inviolability does not protect Members from prosecution, but only from arrest on Parliament's premises or when travelling on parliamentary business.

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' (Austria, 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.

In France, according to the information obtained, judicial practice appears to have proceeded from a narrow definition of the acts covered by non-liability, excluding, for example, comments made by a Member of Parliament during a radio interview or views expressed in a report drawn up in connection with a mission undertaken at the request of the Government.

Some constitutions refer specifically to votes cast and opinions expressed on the floor of the House or at parliamentary committee meetings.

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, paragraph 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, paragraphs 12 and 13); and under the Finnish Parliament Act the protection applies to opinions expressed in Parliament (Section 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 recognising that statements made in the ordinary fulfilment of civic duties or duties of a purely private nature are not covered by this aspect of immunity.

Again as regards acts covered by non-liability, the most notable variation is, nevertheless, found in the Basic Law of Germany (Article 46(2)) and in the Greek Constitution (Article 61(2)), which both exclude defamatory remarks from the scope thereof.

Under Article 61(3) of the Greek Constitution, Members of Parliament, by virtue of their non-liability, may refuse to testify on information obtained or passed on in the performance of their duties or on the persons who have supplied or to whom they themselves have given such information.

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.

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

House. This is the case, for example, in Denmark (Article 57, second section, of the Constitution), Finland (Section 13 of the Parliament Act), Sweden (Chapter 4, Article 8, first paragraph, of the Constitution), Germany (Article 46(2) of the Basic Law), and Greece (Article 61(2) of the Constitution). In Italy, Parliament is frequently called upon to consider requests relating to application of Article 68, first paragraph, of the Constitution, on the non-liability of Members of Parliament *('insindacabilità)*.

In most Member States non-liability is considered to belong to the public sphere, and a Member of Parliament cannot, therefore, relinquish it of his own free will. In the United Kingdom, however, since the Defamation Act 1996 entered into force, Members have been permitted to forgo their privilege in defamation trials.

On another point relating to the United Kingdom, non-liability (i.e. freedom of speech) applies not only to Members, but to all those attending parliamentary proceedings (witnesses, Civil Servants, experts, and so forth). This is also the case in the Irish Parliament where parliamentary committee meetings are concerned.

B. Inviolability

In general this form of immunity is such that, unless Parliament gives its authorisation, no Member may be arrested or prosecuted for acts not carried out in the performance of his duties.

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

In a number of Member States the scope of inviolability has been restricted in the 1990s to the extent that the authorisation of the House is no longer required in order to institute criminal proceedings. Authorisation is necessary only when it is proposed to take certain steps against a Member such as arrest or other specific measures (Italy and France). In Belgium, the House concerned has to give its authorisation for a Member to be committed for trial or summoned directly before a court or tribunal or arrested. Authorisation is no longer required, however, for ordinary investigative measures.

The only *acts covered* are, in principle, those likely to be the subject of criminal prosecution.
Some legal systems exclude from the sphere of inviolability certain categories of offence considered as more serious. For example, the Irish Constitution (Article 15, paragraph 13,) excludes offences such as treason, felony and violations of public order; under certain conditions, the Portuguese Constitution excludes premeditated offences punishable by imprisonment of more than three years (Article 157(2) and (4)); and the Swedish Constitution excludes criminal offences punishable by a term of imprisonment not less than two years (Chapter 4, Article 8).

Derogations from the principle of inviolability are sometimes laid down for minor offences. Such is the case with simple misdemeanours, since it is felt in some quarters that, in this case, given the relative non-seriousness of the punishment and the type of act punished, the function, independence and reputation of the parliamentary institution and of its members would not be called into question.

On the other hand, it is sometimes 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[85], the relationship between misdemeanours and the principle of inviolability is not, however, free from difficulty or dispute.

Under the Austrian Federal Constitutional Act, offences clearly unrelated to the political activities of the Member of Parliament concerned are excluded from the scope of inviolability (Article 57(3)).

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

Judges are generally responsible for ascertaining whether an offence falls under the heading of *flagrante delicto*. 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 the offence in question must also be a particularly serious one: this applies, for example, to the stipulation in Article 68, second paragraph, of the Italian Constitution that the act involved must be such that an arrest warrant is compulsory; this is also the case in the Portuguese Constitution, whereby immunity against arrest or detention is maintained, even in the case of *flagrante delicto*, provided that the act concerned is not a premeditated offence punishable by more than three years' imprisonment; Section 14 of the Finnish Parliament Act stipulates that, if immunity is to be ruled out, the representative in question must be caught in the act of committing an offence carrying a minimum penalty of not less than six months' imprisonment.

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 parliamentary term (as for example in Denmark, Spain, Greece, Italy, Germany, and Portugal), in others it refers only to the period of the sessions (Belgium and Luxembourg)[86].

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, third paragraph, of the French Constitution; Article 46(4) of the German Basic Law; Article 59, fifth and sixth paragraphs, of the Belgian Constitution; Article 69(3) of the Luxembourg Constitution; Article 157(3) of the Portuguese Constitution, albeit with the exclusion of certain types of offence; and Article 57(3) and (5) of the Austrian Federal Constitutional Act.

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.

85 In Germany, proceedings against Deputies relating to minor infringements (including those relating to highway law) require the prior authorisation 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 authorisation.

86 However, this distinction is irrelevant in practice when there is no break between the end of one session and the start of the next. In France, since the 1995 constitutional revision, the extent of the protection afforded by non-liability has ceased to be linked to the rules governing parliamentary sessions.

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*[87] 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) or very succinct (e.g. the Belgian Chamber of Representative, the Danish Folketing, and the Finnish Eduskunta).

In most Member States, requests to waive immunity are drawn up by the prosecution services, but in some countries may be drawn up by other authorities (the courts having jurisdiction, for example). Requests are sent to the Speaker of the House concerned either directly or, in some cases, via another authority such as the Minister of Justice or the Prime Minister.

The request, once received, is forwarded to the competent committee. This may be a committee specially formed to assess each specific case (e.g. in both Chambers of the French Parliament when the object of the request is to suspend proceedings, detain a Member, or restrict his freedom, in the Luxembourg Chamber of Deputies, or the Austrian Nationalrat), or a permanent committee, as is usually the case[88].

The hearing by the competent committee of the Member concerned is expressly provided for in many of the parliamentary Rules of Procedure.

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 authorising 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 Representatives, 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).

87 This particular procedure is non-existent in Ireland, the Netherlands and the UK

88 This arrangement may have several advantages: "it simplifies the procedure, guarantees more uniform jurisprudence and dispels any suspicion of there being a link between the composition of the committee and the Member concerned" (in "L'immunité parlementaire", French Senate, May 1994, n° 56, p. 4).

The decisions of the parliamentary assemblies on requests concerning this subject are taken by secret ballot in Spain, Greece, Italy, Luxembourg and Portugal[89].

In France, since the 1995 constitutional revision, decisions to authorise arrest or any other restriction on freedom have rested with the Assembly Bureaux, whether or not Parliament is in session. On the other hand, proposals to suspend arrest or judicial supervision orders fall under the responsibility of the Assemblies in plenary sitting.

The German Bundestag follows a simplified procedure to deal with traffic offences and cases of minor importance. The appropriate committee takes a prior decision, which is communicated in writing to all Members and treated as the decision of the Bundestag if no objections have been raised within seven days of its notification.

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 authorisation requested and that specific consequences arise from the non-observance of that time-limit. Article 62(2) of the Greek Constitution, for example, states that, if the Chamber does not decide on the request for authorisation to proceed within a period of three months, the request is considered rejected (this period is reduced to 45 days in the case of slanderous defamation 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 authorisation 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. In Austria, under Article 57(4) of the Federal Constitutional Act, the Nationalrat shall be deemed to have given its consent if it fails to rule within right weeks on a request from the authority appointed to effect the prosecution.

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 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 offences of defamation committed by Members of Parliament while carrying out their duties (Article 61(2) of the Greek Constitution).

Furthermore, in Belgium, restraining measures requiring the intervention of a magistrate can be ordered only by a judicial authority specially designated for that purpose – the First President of the Court of Appeal – on application by the examining magistrate. Searches and seizures forming part of such measures may be carried out only in the presence of the President of the Chamber concerned or a Member whom he has appointed to represent him.

89 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 164 of the Rules of Procedure of the Chamber; Portugal: Rule 11(5) of the Rules for Deputies.

From an analysis of *parliamentary practice* 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 systematised. 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 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, Finland, and Sweden).

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.

Moreover, the information obtained suggests that at least two national parliaments, namely the Austrian Nationalrat and both Houses of the Spanish Parliament, are tending to narrow down the criteria which they have observed hitherto.

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 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), or else its purpose has been to enable all necessary investigative measures to be taken on the understanding that the judicial proceedings must be conducted in such a way that they will not interfere with the discharge of parliamentary office.

Some parliaments have mentioned their right to grant requests to waive inviolability only in part, for instance by deciding on a case-by-case basis to refuse or authorise restrictions on freedom for which authorisation has been sought (France) or by giving permission for a Member to be, say, committed for trial but not arrested (Belgium).

In addition, because significant changes have been made to the legal arrangements applicable in some Member States, it is still too early to analyse what has not yet developed into fully fledged parliamentary practice.

2. Comparative tables

	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 specialises 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	Requests to waive parliamentary immunity are drawn up by the Principal Crown Prosecutor attached to the Court of Appeal having jurisdiction for the alleged offence. The Prosecutor sends them to the he President of the House concerned.	As before	***Chamber*** After each election the Chamber appoints a seven-member special committee. ***Senate*** Requests for authorisation to proceed have traditionally been the responsibility of the Justice Committee.	*Non-liability* Members of the Chamber of Representatives and Senators are covered by non-liability in respect of opinions expressed and votes cast in the performance of their duties. *Inviolability* The rules of parliamentary inviolability apply only to criminal matters. However, they cover acts committed both in and outside the performance of a Member's duties.	A Member who is the subject of a judicial inquiry may, at any stage of the investigation, request the House to which he belongs to suspend the proceedings. The House must decide by a two-thirds majority of the votes cast. Acting on its own initiative by a simple majority, the Chamber of Representatives or the Senate may suspend detention or proceedings instituted against a Member before a court or tribunal.	***Chamber*** The procedure is governed by Rule 93 of the Chamber's Rules of Procedure. The Prosecutions Committee has the task of considering any requests with a view to making recommendations to the plenary. The only persons entitled to speak in plenary debates are the rapporteur, the Member concerned or a Member representing him, one Member speaking in support of the request, and one speaking against it. ***Senate*** The Rules of Procedure contain no specific provisions on the waiver of parliamentary inviolability.	Fresh requests to waive Members' immunity have to be drawn up when the two Houses as a whole have been newly elected, since they are not competent to deal with the previous requests. However, a judicial authority may institute proceedings while the Houses are dissolved. If proceedings have been instituted after the close of a session or the end of a parliamentary term, the House may call for them to be suspended.

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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 authorise 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.

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GERMANY	The following are authorised 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 implies that no proceedings may be instituted against a Member for opinions expressed or votes cast by him, provided that the actions in question are encompassed entirely within the scope of proceedings in the Bundestag, its committees, or parliamentary parties, or of Bundestag documents. Proceedings can be instituted, however, against a Member guilty of libellous insult. Inviolability covers all actions punishable by law and protects Members against every form of criminal proceedings provided that they have not been apprehended in the act of committing an offence or on the day after the offence was committed. When considering requests for authorisation affecting immunity, the only question is whether the charge has been framed convincingly. No attempt is made to determine whether the facts of the case actually occurred and have been properly assessed (since that is a matter for the courts).	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 is informed via the appropriate notification from the prosecuting authorities when a Member of the Bundestag (MdB) has become the subject of a judicial inquiry. When requests have been submitted for authorisation to institute legal proceedings or take other coercive measures against an MdB, the committee draws up a recommendation to the Bundestag in each individual case or, when a request relates to a traffic or petty offence, a 'preliminary ruling'.	The Bundestag authorises the waiver of a Member's immunity until the end of the parliamentary 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 specialises 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 parliamentary 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 specialises 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 Member 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 Congress 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 Member 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 parliamentary 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 responsible for forwarding a request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specialises 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	Requests have to be drawn up by the Public Prosecutor attached to the appropriate court of appeal. In the event of failure to comply with the above formality, the procedure is deemed null and void.	The Minister for Justice	There is no committee responsible for dealing with requests for authorisation of measures depriving a Member of his freedom or restricting that freedom, which are first examined by a Bureau delegation before being dealt with by the Bureau as a whole. Requests to suspend detention, measures depriving a Member of his freedom or restricting that freedom, or proceedings instituted against a Member, after being printed and distributed, are sent to be considered by an *ad hoc* committee consisting of 15 (Rule 80 of the Rules of Procedure of the National Assembly) or 30 members (Rule 105 of the Rules of Procedure of the Senate).	Parliamentary immunity implies two forms of protection: non-liability, covering actions related to performance of a Member's duties, and inviolability, covering actions not related to those duties. Under Article 26(1) of the Constitution, no Member 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 Members in both the civil and the criminal sphere, and its withdrawal may not be requested. Furthermore, Article 26, second paragraph, of the Constitution states that, in criminal matters or matters of summary jurisdiction, no Member may be arrested or subjected to any other measure depriving him of his freedom or restricting that freedom without the authorisation of the Bureau of the House to which he belongs, unless he has committed a crime or been apprehended in the act of committing an offence. This form of inviolability does not apply to civil matters. Article 26, third paragraph, stipulates that detention of a Member, measures depriving him of his freedom or restricting that freedom, or proceedings instituted against him must be suspended if the House to which he belongs so	At the request of one or more Members, the Chamber concerned may at any moment call for suspension of the arrest of a Member, measures depriving him of his freedom or restricting that freedom, or proceedings aimed at his arrest. This facility permits the Chamber to extend immunity to cover proceedings initiated prior to commencement of a Member's mandate or detention measures ordered after he has committed a crime or been found in the act of committing an offence.	When a request has been submitted to arrest a Member or deprive him of or restrict his freedom, the Bureau is not called upon to judge the Member, but has to decide whether the request is genuine, truthful and made in good faith. As regards requests for suspension, the appointment of a rapporteur for the *ad hoc* committee, the examination of the committee's conclusions and the inclusion of the matter on the agenda all follow the usual rules. The National Assembly or the Senate debates the conclusions at a public sitting. The Chamber concerned may deliver its opinion by public vote, adopting a resolution. Where necessary, it may be convened automatically for additional sittings to	Unlike non-liability, the effects of which are not limited in time, inviolability lasts no longer than the term of office of the Member concerned. As a result of the constitutional revision of 4 August 1995, decisions to suspend detention, measures depriving a Member of his freedom or restricting that freedom, or proceedings are valid only for the session at which they were taken.

				requests.		consider the request.	

	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 specialises 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. However, in each House of the Oireachtas, a Committee on Procedures and Privileges may consider and report, as and when requested to do so, on matters pertaining to Members' privileges.	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 decisions on parliamentary immunity?	What is the authority responsible for forwarding a request for a decision on parliamentary immunity?	Does the Parliament have a committee which specialises 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 authorising requests under Article 68 of the Constitution; in the case of the Senate, the Committee on Electoral Matters and Parliamentary Immunities.	Members of Parliament may not be made answerable for opinions expressed or votes cast in the performance of their duties. Unless the House to which he belongs has given its authorisation, no Member of Parliament may be subjected to searches of his person or home, arrested or otherwise deprived of his personal freedom, or held in detention except where the above steps are taken to enforce a final conviction or the Member has been apprehended in the act of committing an offence for which an arrest warrant is compulsory in the case of *flagrante delicto*. Authorisation of the House is likewise required in order to intercept a Member's conversations or communications by any means whatsoever or to seize his correspondence.	The judge may suspend the judicial proceedings if he thinks fit.	The procedure is based on Rule 18 of the Rules of Procedure of the Chamber of Deputies and Rule 135 of the Rules of Procedure of the Senate. Requests are sent to the House to which the Members in question belong, published, and forwarded to the relevant committee, which must examine them within a time-limit of 30 days (which may be extended) on the basis of an introductory report by one of its members, further information, written evidence and other documents which the Deputy or Senator concerned is entitled to supply, and the procedural documents forwarded by the judge. The committee must draw up final proposals granting or refusing authorisation 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 authorisation for legal proceedings may not be modified for the remainder of the parliamentary 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. The only relevant provisions now in force, as laid down in Articles 343 and 344 of the Code of Criminal Procedure, relate to proceedings in general and not Members of Parliament in particular.

	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 specialises 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, the public prosecutor's office, or the injured party	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 authorisation of the Chamber of Deputies, except where he has been found in the act of committing an offence. Parliamentary immunity applies only to criminal matters.	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 put to the vote 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 parliamentary 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 specialises 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.	Not applicable.	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.	Not applicable.

	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 specialises 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?
AUSTRIA	The following are entitled to request the consent of the Nationalrat or Bundesrat, as appropriate, to the prosecution of a Member of Parliament: (a) the judicial authority in the case of acts punishable by a court of law, (b) the administrative authority in the case of acts punishable by the administrative authority, (c) (in theory and practice) the disciplinary body in the case of acts amenable to prosecution under disciplinary law.	A request by the prosecuting authority for consent to the prosecution of a Member of Parliament must be submitted directly to the Nationalrat or Bundesrat, as appropriate.	The Nationalrat and the Land Assemblies are each required to set up a committee on immunities.	'Professional immunity', which precludes prosecution by criminal courts and administrative authorities and under disciplinary law and the emergence of a civil liability, extends to votes cast and oral and written statements made by a Member of Parliament in the exercise of his mandate. 'Extra-professional immunity', which constitutes an obstacle to prosecution by the criminal courts and administrative authorities and under disciplinary law while a Member of Parliament remains in office, extends to offences committed in connection with the political activities of the Member concerned; even in such cases the appropriate representative body may, of course, consent to the prosecution of the Member by an authority.	Prosecution by an authority must be deferred if the Member concerned or one third of the members of the committee responsible for matters relating to immunity request that a ruling be obtained from the parliamentary body on the existence of a link with the Member's political activities. After being arrested in the act of committing a crime, a Member must be released at the request of the appropriate representative body or, if it is not in session, of the committee entrusted with matters relating to immunity.	Requests for consent to the prosecution of a Member of Parliament by an authority are forwarded to the Committee on Immunities of the appropriate representative body for preliminary consideration. The committee must report to the plenary in time for the request to be put to the vote not later than the penultimate day of an eight-week period, after which consent to the prosecution is deemed to have been given.	As a Member's immunity ceases when his term of office expires, a request for the waiving of his immunity which has not been fully processed becomes redundant when he leaves the parliamentary body concerned. If he is re-elected on the expiry of a parliamentary term, a request for the waiving of immunity which has not yet been fully processed becomes invalid by virtue of the rule that matters before a Parliament lapse when it is dissolved, and the request must therefore be resubmitted.

	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 or for the hearing of the Deputy?	Does the Parliament have a committee which specialises in this matter?	What acts by Deputies 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 either because the parliamentary term has expired or for any other reason?
PORTUGAL	The Courts.	The judge concerned.	The Parliamentary Ethics Committee.	Deputies 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 Deputy may be arrested or imprisoned without the authorisation of the Assembly, except in the case of premeditated offences carrying a maximum prison sentence of over three years and where the Deputy has been found in the act of committing the offence. Deputies may not be heard as declarants or defendants or without the authorisation of the Assembly. It shall be obliged to deliver authorisation in the latter case where there is strong evidence that a premeditated offence has been committed and that offence carries a maximum prison sentence of over three years. When criminal proceedings have been initiated against a Deputy and he has been definitively accused, the Assembly shall decide whether the Deputy must be suspended so that the proceedings may continue. Such a decision shall be mandatory in the case of the type of offence referred to above.	Criminal proceedings may only be suspended where the offence does not carry a maximum prison sentence of over three years and the Assembly has not suspended the Deputy. In the case of a premeditated offence with a maximum prison sentence of over three years, the Assembly shall be obliged to issue a decision to suspend the Deputy so that the proceedings may continue. No Deputy may be detained or imprisoned without the authorisation of the Assembly, except in the case of a premeditated offence carrying a maximum prison sentence of over three years and where the Deputy has been found in the act of committing the offence.	The competent authority draws up the request for a waiver of immunity; the relevant committee draws up an opinion on the request, and the Assembly decides by secret ballot requiring an absolute majority of the Deputies present.	Once a Deputy'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 request for a waiver of parliamentary immunity?	Does the Parliament have a committee which specialises 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?
FINLAND	In order to secure a waiver of the immunity afforded by the limited liability of Members of Parliament (Section 13 of the Parliament Act), an application for charges to be laid against a Member of Parliament may be made by the authority (in practice the public prosecutor) or the injured party wishing to bring a prosecution, who by law has the right to lay charges against a suspect or report an offence with a view to prosecution. An application for a waiver of the enhanced protection against criminal proceedings afforded to Members of Parliament (Section 14 of the Parliament Act) may be made by a chief police- officer or the public prosecutor, if the Member of Parliament is to be apprehended or forbidden to travel for a given period, or a court, if the Member of Parliament is to be imprisoned.	In order to secure a waiver of the immunity afforded by the limited liability of Members of Parliament (Section 13 of the Parliament Act), an application for charges to be laid against a Member of Parliament may be made by the authority (in practice the public prosecutor) or the injured party wishing to bring a prosecution, who by law has the right to lay charges against a suspect or report an offence with a view to prosecution. An application for a waiver of the enhanced protection against criminal proceedings afforded to Members of Parliament (Section 14 of the Parliament Act) may be made by a chief police-officer or the public prosecutor, if the Member of Parliament is to be apprehended or forbidden to travel for a given period, or a court, if the Member of Parliament is to be imprisoned.	Parliament's Committee on Constitutional Affairs, unless Parliament decides in plenary to reject the application immediately.	The limited liability provided by Section 13 covers only a Member of Parliament's action in Parliament, i.e. actions or omissions which are punishable by imprisonment and have been committed by a Member of Parliament in the course of his duties. The enhanced protection of Members in criminal proceedings refers to both their parliamentary activities and other conduct. Under Section 14 of the Parliament Act, “a representative may not be apprehended, detained or subjected to a travel ban without the consent of Parliament before the charges against him have been taken up for consideration, unless he has been caught in the act of committing an offence for which the minimum penalty is a period of imprisonment no shorter than six months”.	Relevant legal proceedings against a Member cannot be initiated without the consent of Parliament (Section 13). If consent has been given and proceedings have started, suspension is decided upon in accordance with the general rules of court procedure. In theory, it seems possible that Parliament, e.g. in the light of new evidence, could reconsider the issue and withdraw its earlier consent and, accordingly, ask for suspension. In cases covered by Section 14, criminal investigations involving a Member can be pursued without Parliament’s interference until it becomes necessary to effect an arrest or impose a travel ban. Parliament’s consent to these steps cannot, in practice, be reconsidered in order to suspend the proceedings. Once the case has been presented in court, no action from Parliament is needed for further proceedings.	An application is delivered to Parliament's secretariat, addressed to Parliament or its Speaker. Parliament sitting in plenary refers the application to the Committee on Constitutional Affairs for consideration, unless it rejects the application, for example as being manifestly ill-founded. In this respect the Speaker makes a proposal to Parliament in plenary concerning the procedure to be followed once the matter has been discussed by the Speaker's Council, consisting of the Speaker, the Deputy Speakers and the chairmen of the parliamentary committees. In its report the Committee on Constitutional Affairs states its position on the application and recommends either that it be accepted or that it be rejected. The report is tabled in plenary, after which the matter is discussed at a subsequent plenary sitting and a decision is taken on it.	Is determined in accordance with the general rules of parliamentary procedure, i.e. the matter lapses unless it has been fully dealt with within the same parliamentary term.

	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 specialises 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?
SWEDEN	A prosecutor or any other party who wishes to initiate court proceedings must make a written application to the Speaker. After the Riksdag has taken a decision to waive immunity, the proceedings are to be instituted in a public court.	Applications are submitted directly to the Speaker.	The Committee on the Constitution.	**Chap. 4, Art. 8 of the Instrument of Government (IG)**: No one may bring an action against any person who holds office, or has held office, as a member of the Riksdag, deprive him of his liberty, or prevent him from travelling within the country, on account of his actions or statements made in the performance of his duties, unless the Riksdag has given its consent by means of a decision in which no fewer than five sixths of those present and voting have concurred. If, in any other case, a member of the Riksdag is suspected of having committed a criminal act, the relevant provisions of law relating to arrest, detention or remand are applicable only if he admits guilt or was caught in the act, or if the minimum penalty for the crime is not less than two years' imprisonment. The provisions on immunity also apply to the Speaker and alternates performing duties as Members.	If the Riksdag decides not to waive immunity, it is for the prosecutor to suspend any legal measures taken against the Member, e.g. a preliminary hearing.	**Chap. 3, Art. 18 of the Riksdag Act**: If a prosecutor calls upon the Riksdag to give its consent, in accordance with the Instrument of Government, Chapter 4, Article 8, first paragraph, to the prosecution or restraint of a member of the Riksdag, the prosecutor shall make a written application to the Speaker to this effect. The above provisions concerning prosecutors shall also apply to any other person who calls upon the Riksdag to give its consent to the prosecution of a member of the Riksdag on grounds of his conduct. If the document of application is so incomplete that it cannot be put before the Riksdag for consideration, or if the applicant has not demonstrated that he has grounds for taking such action or requesting that it be taken by an authority, the Speaker shall reject the application. In all other cases he shall announce the matter at a meeting of the Chamber. After notice of the application has been given, the matter is referred to the Committee on the Constitution for consideration. The Committee's report is then put to the vote in the Chamber. The waiver of immunity requires a qualified majority (of at least five sixths of Members)	As regards the waiver of immunity pursuant to Chap. 4, Art. 8, first paragraph, of the IG, the consent of the Riksdag is required even if the Member has left the Riksdag when the matter arises. The protection afforded by Chap. 4, Art. 8, second paragraph, of the IG does not extend to individuals who have been but are no longer Members of the Riksdag. Requests for waiver of immunity are referred to the Committee on the Constitution. If a case has not been settled before the next general election, there will not be any report until the new Chamber has convened. Requests do not need to be renewed and the action to be taken will be decided by the new Chamber.

	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 specialises 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	The Defamation Act 1996 stipulates that a person may waive the parliamentary immunity applying to him, for the purposes of defamation proceedings.	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.	The concept of such waiver does not exist in any Parliament run according to the Westminster system.	Not applicable

EUROPEAN PARLIAMENT

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) lays down 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.

Articles 9 and 10 of this protocol (the Protocol on the privileges and immunities of the European Communities - PPI) reiterate the provisions concerning non-liability and immunities 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 EAEC, 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.

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[90] 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 set out above, have continued to apply to Members of the European Parliament even after the introduction of direct elections by the peoples of the Member States of the Union.

The current version of Rule 3(1) of the Rules of Procedure of the European Parliament reflects this situation by laying down that: 'Members shall enjoy privileges and immunities in accordance with 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.'

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-related disparities in the treatment of Members of the European Parliament.

In a resolution adopted on 15 September 1983[91], Parliament committed itself to proposing a revision of the PPI with a view to adapting it to the new mode of composition of Parliament and to drawing up a uniform statute for all its Members.

On 14 November 1983, the Enlarged Bureau of the European 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 consultation, Parliament proposed a number of amendments to the Commission draft in a resolution adopted on 10 March 1987[92].

This resolution had been preceded by a report by the Committee on Legal Affairs and Citizens' Rights (the Donnez report, A2-0121/86), which set out in detail the reasons justifying revision of the PPI, in view of the fact that the present situation constitutes discrimination between Members of different nationalities.

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

91 OJ C 277, 17.10.1983, P. 135.

92 OJ C 99, 13.4.1987, p. 43.

Despite successive calls by Parliament for action on this issue[93], the Council has so far failed to take a decision on amending Articles 9 and 10 of the PPI[94]. 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 changes to the provisions concerning parliamentary immunity.

The new paragraph 4 added by the Treaty of Amsterdam to Article 190 (formerly Article 138) of the EC Treaty lays down that the European Parliament shall, after seeking the opinion of the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members[95].

Article 5 of the draft Statute for Members of the European Parliament (report A4-0426/98 drawn up by Mr. Rothley on behalf of the Committee on Legal Affairs and Citizens' Rights) adopted by the EP in its resolution of 3 December 1998 lays down that: 'The European Parliament shall rule on a request for the waiver of immunity of one of its Members in accordance with principles which it shall adopt on a proposal from the committee responsible.'

The procedure for waiving a Member's parliamentary immunity is governed by Rule 6 of Parliament's Rules of Procedure; it will be discussed in Chapter 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 indefinite.

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 subject of interpretation by the European Court of Justice in two judgments handed down, respectively, 1964[96] and in 1986[97]. From these two judgments, and from Rule 8(1) of 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.

93 In addition to the texts already referred to, see the resolution on the system of immunity for Members of the European Parliament of 16 May 1991 (OJ C 158, 17.6.1991, p. 258) and the decision of the same date (ibid., p. 27).

94 Article 311 (formerly Article 239) of the Treaty establishing the European Community (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 48 (formerly Article N) of the Treaty on European Union concerning amendment of the Treaty itself.

95 The EP had asked for the introduction of a legal basis whereby the EP might establish regulations governing the performance of duties by its Members (see, in particular, paragraph 38 of the resolution adopted on 13 March 1997). It wanted those regulations to be adopted by a majority of its Members, after seeking the opinion of the Commission and with the approval of the Council acting unanimously. However, the unanimity requirement was maintained.

96 Judgment of 12 May 1964 (Wagner v. Fohrmann and Krier), Case 101/63, ECJ [1964] pp. 397 ff.

97 Judgment of 10 July 1986 (Wybot v. Faure), Case 149/85, ECJ [1986], pp. 2391 ff.

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, Parliament's successive committees responsible (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; since July 1999 the committee responsible is again the Legal Affairs Committee) have repeatedly taken the view that immunity is effective from the moment when a Member is declared to have been elected[98] up to the moment when his term of office comes to an end.

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 8(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-election, up to the day preceding that of the opening of the first sitting following the election concerned[99].

Exceptions obviously apply where a Member's term of office ends prematurely for reasons of decease, resignation or incompatibility: the date on which the term of office is deemed to have ended, and on which, consequently, the protection conferred by parliamentary immunity ceases to apply, is determined on the basis of the interpretative criteria adopted by Parliament and set out in a note attached to Rule 8 of its Rules of Procedure.

It should be added that, in view of the silence of the PPI on the matter and the absence of any other rule thereon, Parliament has adopted the criterion whereby immunity under Article 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 criterion 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 jeopardised by actions occurring both before and after the commencement of a Member's term of office.

III. The scope and purpose of parliamentary immunity

98 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 8(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).

99 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.'

Article 28 of the merger Treaty of 8 April 1965 leads to the conclusion 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 seen as individuals. The same interpretation underlies the principles set out by the Court of Justice in its judgments referred to above, in particular where it has ruled that Article 10 of the PPI is to be considered from the point of view of equal treatment for all Members of the European Parliament, irrespective of nationality[100].

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

(a) *Article 9 of the PPI (non-liability)*[101]

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 to be subject only to the rules governing procedure and the conventions of parliamentary etiquette, the determination and application of which are the sole responsibility of Parliament itself and subject to no intervention by outside bodies.

Despite the existence of analogous provisions in the Member States, the scope of this privilege is not identical to that prevailing under the various domestic systems. The European 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[102]:

'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 wording of 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[103].
According to legal opinion[104], and following the interpretation of the parliamentary committee responsible, this wording should be taken to mean opinions expressed and votes cast not only during

100 See the judgment of 10 July 1986, Case 149/85, Wybot v. Faure, ECJ [1986], p. 2407, paragraph 2.

101 The term 'non-liability' does not appear 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.

102 Resolution on the draft protocol amending the Protocol on the Privileges and Immunities of the European Communities, OJ C 99, 13.4.1987, p. 43. See also the Donnez report (A2-0121/86), Part B, p. 20.

103 Cf. Article 26 of the French Constitution, Article 58 of the Belgian Constitution and Article 68 of the Italian Constitution.

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 deemed not to cover opinions expressed by Members at party conferences, during election campaigns or in books or articles which they publish[105].

Non-liability is considered to apply only to 'opinions' and 'votes' and not to any acts of physical violence, even where perpetrated with the aim of giving expression to a particular opinion[106].

In contrast to the provisions of the first paragraph of Article 46 of the Basic Law of the Federal Republic of Germany 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[107].

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 the first paragraph of Article 46 of the German Basic Law which excludes defamatory statements.

Non-liability as defined in Article 9 of the PPI is absolute; 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 6 of the Rules of Procedure.

In the opinion it adopted in March 1987 on the draft revision of the PPI, the European Parliament proposed that a new Article 9a be inserted whereby Members would be entitled to refuse to testify in court, in so far as their testimony related to their activities as Members of the European Parliament.

The effect of this proposal would be to give official recognition to a privilege existing in various Member States but which is not referred to in the existing protocol

However, the European Parliament has received a number of requests from national authorities seeking authorisation for Members to testify in court or make statements, in accordance with the terms of their national legislation.

After receiving a request for authorisation for a Portuguese Member to testify in court, the committee reviewed the general problem posed by this type of request.

'The Committee was of the opinion that Members of the European Parliament did not require, and should not require, Parliament's authorisation to appear as witnesses or experts and that consequently there was no need for any initiative to have this condition made part of the Protocol on the privileges

104 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).

105 Cf. Jeuniaux, op. cit., p. 180, and Senén Hernández, op. cit., p. 322.

106 Cf. Harms, op. cit., p. 91, and Senén Hernández, op. cit., p. 321.

107 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. 42 ff.

and immunities of the European Communities. It was also of the opinion that Article 5 of the Treaty establishing the European Community already enabled judicial bodies in the Member States to allow Members of the European Parliament to appear as witnesses or experts and to fulfil their duty to cooperate with judicial authorities without prejudicing their independence or office, as had been shown by experience'[108].

At its meeting of 18 March 1996, the Committee on the Rules of Procedure proposed the following interpretations, adopted in plenary on 27 March 1996, concerning paragraphs 4 and 8 of Rule 6 of the Rules of Procedure:

'Where the request for the waiver of immunity entails the possibility of obliging the Member to appear as a witness or expert witness thereby depriving him of his freedom, the committee shall:

- ascertain, before proposing that immunity be waived, that the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to fulfil his parliamentary obligations;

- seek clarification regarding the subject of the statement, in order to ensure that the Member is not obliged to testify concerning information obtain confidentially in the exercise of his mandate which he does not see fit to disclose'.

The President shall ensure that recourse is had to this right 'where the aim of the arrest or prosecution is to make the Member appear as a witness or expert witness against his will, without his immunity having been waived beforehand.'

(b) *Article 10 of the PPI (immunity in the strict sense of the word)*

Immunity in the strict sense of the word 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 carried out within or outside Parliament.

Article 10 of the PPI draws a distinction between two types of situation arising 'during the sessions of the European Parliament', according to whether the Member concerned is physically present *in the territory of his own Member State* or *in the territory of any other Member State*.

108 OJ C 117, 22.4.1996.

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 we have already seen, this formula actually creates inequality of treatment as between Members because 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 waiver of immunity, to review the relevant national legislation concerning immunity and the related procedures[109]. This may lead not only to delays in decision-making but also to errors in interpretation and even misapplication of the rules concerned.

Despite the limitations defined in subparagraph (a) of the first paragraph of Article 10 of the Protocol, the European Parliament has created its own body of case-law with regard to the procedure and criteria for waiving immunity.

The principles concerned - to be considered in Chapters IV and V below - are intended to ground Parliament's decision in solid and uniform legal bases while not accentuating nationality-related disparities in the treatment of individual Members. The reports of Parliament's committee responsible thus consistently refer to the 'autonomous character of immunity in the European Parliament compared with national parliamentary immunity'.

Where a Member of the European Parliament is present on the territory of a Member State other than that of which he is a national, he is exempt from 'any measure of detention and from legal proceedings' (Article 10, first paragraph, subparagraph (b) of the PPI).

Unlike subparagraph (a) of the first paragraph of Article 10, subparagraph (b) seems to confer genuine 'Community immunity' to the extent that this prerogative is not defined by reference to national rights. Subparagraph (b) must be interpreted as defining a parliamentary immunity capable of being waived in accordance with the third paragraph of Article 10 of the PPI[110].

As has been repeatedly affirmed in the reports of Parliament's committee responsible, immunity covers Members throughout their term of office; this applies equally to the initiation of legal proceedings, the establishment of acts connected with investigatory procedures, acts in execution of sentences already passed and appeal procedures.

The reference in subparagraph (b) of the first paragraph of Article 10 to *'legal proceedings'*, however, gives rise to some doubt as to whether the scope of the immunity conferred thereby is confined to the area of criminal law or whether it also extends to civil law, as in the case of the concept of non-liability enshrined in Article 9.

109 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.

110 To date, this situation has occurred twice (see docs. A3-0030/94 and A4-0317/98).

Subparagraph (b) 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[111]; however, there remain solid arguments favouring a restricted interpretation confining its scope to criminal proceedings.

Since none of the six founder Member States of the European Communities which had examined the text of Articles 9 and 10 of the PPI granted immunity to Members of its national parliaments 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 Members of their own national parliaments.

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 restriction of individual freedom[112].

Paragraphs 4 and 5 of the current version of Rule 6 of Parliament's Rules of Procedure[113] reinforce this interpretation, 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 regarded as a 'Community immunity', irrespective of the protection accorded by national legislation; it is a specific expression of the general provision set out in the first paragraph of Article 8 of the PPI[114].

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 by the Court of Justice in 1964 (judgement Wagner v. Fohrmann and Krier) to the effect that a session lasts for one year and that 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

111 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).

112 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 given to the House of Lords by the rapporteur and the chairman of the European Parliament committee, op. cit., p. 22, section 93 and p. 23, section 94.

113 Cf. Chapter IV below.

114 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.'

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[115].

In the opinion it adopted in 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 of the PPI.

The final paragraph of Article 10 sets out a conventional 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*'.

Rule 6(8) of Parliament's Rules of Procedure lays down, however, 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'. The fact that the PPI does not confer on Parliament the right to request suspension of proceedings has been explained by the interpretative view that the interruption of immunity has only temporary effect, applying solely at the moment of arrest proper, 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[116].

The European Parliament has twice voted in favour of a request for the suspension of legal proceedings against Members; according to the previous text of what is now Rule 6(8) of the Rules of Procedure, the requests concerned were to be submitted by other Members of the same nationality. In the first case, a request was submitted for the suspension of proceedings against a Belgian Member who had been arrested (and subsequently released) for climbing over the fence of a military installation[117]. The second case concerned the suspension of proceedings against two German Members for failing to comply with a police order to break up a demonstration in Bonn[118]. In both cases, Parliament accepted the interpretation of the Committee on Legal Affairs and Citizens' Rights that the requests concerned were admissible, given that the relevant legislation (Article 45 of the Belgian Constitution and Article 46 of the Basic Law respectively) provided for the possibility of the suspension of proceedings already initiated being requested 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 confers on the European Parliament the right to waive the immunity of individual Members.

115 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.

116 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 from measures depriving them of their personal freedom cannot be claimed where Members are found in the act of committing an offence'.

117 See A2-0151/85 - Decision of 13 November 1985; OJ C 345, 31.12.1985, p. 27.

118 A2-0035/86 - Decision of 12 May 1986; OJ C 148, 16.6.1986.

By referring to a right of Parliament, this rule emphasises the institutional purpose of this prerogative, which seeks to safeguard the independence and normal functioning of the parliamentary institution as such. In addition, Article 28 of the 1965 merger Treaty referred to above may be construed as implying that the PPI should enable Parliament to carry out its tasks 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 a restrictive manner as being a special provision concerning only the material substance of the immunity of a Member of the European Parliament when in the Member State of which he is a national[119].

It may also be concluded from the same interpretation that, given that it is in no way related to the material substance of the immunities recognised under national legislation, the procedure for waiving the immunity of a Member of the European Parliament referred to in the third paragraph of Article 10 of the PPI must be based on Community law.

Nonetheless, since Community law contains no specific provision concerning the waiving of immunity, it is up to the European Parliament to determine the nature of the procedure, on the basis of the powers conferred on it by Article 199 (formerly Article 142) of the Treaty establishing the European Community to adopt its Rules of Procedure.

Rule 6 of Parliament's Rules of Procedure is the only procedural provision existing on the subject.

Parliament's practice over the years has, however, led to the establishment of a series of basic guidelines applying to the procedure for waiving a Member's immunity.

This issue was initially governed by the former Rule 45 of the Rules of Procedure of the ECSC Joint Assembly, on which Parliament's Rules of Procedure, adopted in 1958, were based. Following the revisions of the Rules in 1962[120] and 1967[121], the provisions concerned were incorporated successively in Rules 50 and 51. Following the 1981 revision[122], the provisions concerning immunity set out in the former Rule 51(2) to (6) were incorporated in Rule 5. None of these changes, however, have entailed substantive divergences from the original wording.

In 1981, an interpretative rule was adopted concerning the substance of and voting on the proposal for a decision included in the report of the committee responsible; this interpretation was adopted at the meeting of the committee of 7 April 1981 and announced at the sitting of 14 September 1981.

119 As we have already seen, this interpretation of the European Court of Justice led to the definition of the duration of Parliament's sessions: cf. the judgments already referred to in ECR [1986], especially pp. 2398 and 2407, and ECR [1964], pp. 423 ff.

120 Cf. OJ 97, 15.10.1962, pp. 2437-62.

121 Cf. OJ 280, 20.11.1967.

122 Doc. 1-920/80 of 23 February 1981 (the Luster report) and resolution of 23 March 1981 (OJ C 90, 21.4.1981, p. 48).

In 1988, at the sitting of 13 April[123], two amendments were adopted to Rule 5 concerning, respectively, the consideration by the committee responsible of requests for immunity to be waived and the moment of the vote. A further revision was adopted at the sitting of 13 May 1992[124]. Subsequently, as part of the general revision of the Rules of Procedure (doc. A3-0240/93) required after the entry into force of the Treaty on European Union, that provision was revised once again. The former Rule 5 became Rule 6, and the final subparagraph of paragraph 4 was amended. The various subparagraphs of the former Rule 5 were also renumbered. At the sitting of 11 March 1999[125], and as part of the revision of the Rules of Procedure required for their adaptation to meet the new situation created by the Treaty of Amsterdam, a new subparagraph was added to paragraph 6.

Rule 6(1) of the Rules of Procedure states:

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 announced in Parliament and referred to the committee responsible.'

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 entitled 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 from 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 waiver of the immunity of two Greek Members (A3-0269/91). The committee deemed these requests inadmissible on the grounds that they were invalidated because the relevant Greek authorities were acting in breach of Article 10 of the PPI and of Article 62 of the Greek Constitution[126]. Parliament's rejection of this proposal, on the grounds that it was essential to consider, debate and subsequently take a decision on the requests in question, was in line with the opinion of the Legal Service on the matter[127], according to which, given the principle of separation of powers, it is not for the European Parliament to establish the admissibility of a request in order to determine whether an internal procedure of a Member State is in accordance with its own national law; provided that the independence of Parliament and of its Members is not adversely affected, the precise moment at which, in the context of the preparation of legal proceedings, a request for waiver of immunity is to be drawn up prior to initiation of the judicial action is to be determined by the national law of the Member States.

Furthermore, in 1984, at the beginning of the second parliamentary term, the problem arose of whether requests for waiver of immunity on which no decision had been reached during the lifetime of the previous Parliament should be deemed to have lapsed.

123 OJ C 122, 9.5.1988, p. 75 (A2-0289/87).

124 Decision adopted by the European Parliament on 15 September 1993 (OJ C 268, 4.10.1993).

125 Decision of 11 March 1999, OJ C 175, 21.6.1999, pp. 195 ff.

126 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.

127 A3-0269/91, Annex II; cf. Debates of Parliament, 3-410. pp. 118-126.

At the sitting of 25 October 1984, Parliament rejected a contradictory interpretation and decided that those requests should not be considered to have lapsed, on the grounds that the essential aim of what was then Rule 116 of the Rules of Procedure[128] was to consolidate Parliament's position in 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 waiver of immunity. The submission of such requests is 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. That interpretation is also based on practical grounds seeking to avoid delays caused by the forwarding to the national authorities - in some cases via complicated and lengthy procedures - of legal dossiers which would have then been automatically returned to Parliament through the same channels.

At the beginning of the fourth parliamentary term, the Committee on the Rules of Procedure agreed to review in their entirety all the provisions relating to unfinished business. On a proposal from that committee, the former Rule 167 was revised by decision of Parliament of 12 March 1996[129]. Pursuant to the provisions of the first paragraph of the current Rule 185, at the end of the last part-session before elections, all Parliament's unfinished business is deemed to have lapsed, subject to the provisions of the second paragraph. The second paragraph reads: 'At the beginning of each parliamentary term the Conference of Presidents shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such matters.' Requests for waiver of immunity might also be covered by the provisions of that paragraph.

Under subparagraphs (a) and (b) of the first paragraph of Article 10 of the PPI, requests for waiver of parliamentary immunity may be made by the authorities of a Member State other than the one of which the Member concerned is a national[130].

'If subparagraph (b) of the first paragraph of Article 10 of the PPI were to be deemed to be introducing an exemption from legal proceedings which did not give rise to waiver of parliamentary immunity, in practice, a Member of the European Parliament would then, for the duration of his mandate, enjoy non-liability in respect of criminal and quasi-criminal matters in every country of the Community - except his own - whatever the offence of which he was accused, even murder. However, a privilege which went beyond the bounds of common law to that extent would be inconceivable in law.' (PE 207.279/Ann.).

Since 1987, the committee responsible in this field has been 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. Pursuant to the decision of the European Parliament of 15 April 1999, responsibility for matters relating to privileges and immunities reverted to the Committee on Legal Affairs and the Internal Market as from the fifth parliamentary term (July 1999).

128 The former Rule 116 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.'

129 OJ C 96, 1.4.1996, p. 25; Report A4-0025/96, rapporteur: Mr Jean-Pierre Cot.

130 To date, this has happened at least twice (Docs. A3-0030/94 and A4-0317/98).

The current wording of Rule 6(2) of the Rules of Procedure is the result of a decision adopted by Parliament at the sitting of 13 May 1992. It reads:

'2. The committee shall consider such requests without delay and in the order in which they have been submitted.'

This rule combines earlier decisions of the committee concerning the time-limit for and the order of processing of requests for waiver of immunity.

With regard to the time-limit, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities has adopted the interpretation of Parliament's Legal Service whereby the rules existing in the Member States which set a maximum time-limit for approval of a decision to proceed or otherwise with a waiver of immunity are not applicable to the procedure for the waiver of immunity of Members of the European Parliament[131].

In the case of Members holding a dual mandate, Parliament acts in accordance with a decision adopted by the committee responsible at the beginning of the parliamentary term following the first direct elections[132] and has traditionally waited for the decision of the national parliament concerned. Although the procedures in question are independent of each other, it has been considered desirable, for both political and practical reasons, to await the national parliament's position on a request before considering it. This practice accounts for the delay which sometimes characterises Parliament's decisions.

During the May 1992 revision of the Rules of Procedure, the following new paragraph was added:

'3. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary for it to form an opinion on whether immunity should be waived. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.'

The aim was to clarify the earlier wording of this paragraph by introducing further provisions enabling the committee to ask for information not set out in the original request for waiver of immunity and the Member concerned to submit such information. These provisions, together with those of the final section of Rule 6(5) of the Rules of Procedure, reinforce the legitimacy of the parliamentary committee's right to obtain detailed information concerning each case examined and to have at its disposal for this purpose all the information which it deems necessary for it to reach a decision.

On several occasions, the European Parliament has based its refusal to waive a Member's immunity on the grounds that the national authorities in question had failed in their duty to cooperate under Article 5 of the EEC Treaty and not provided certain information which had been requested as being indispensable for the consideration of the requests concerned. The Committee on the Rules of

131 Cf. A3-0269/91, p. 6.

132 This decision was adopted by the European 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. drawn up by Mr Ferri, chairman of this Committee.

Procedure, the Verification of Credentials and Immunities took the view that such failure justified it in declaring the requests inadmissible[133].

Furthermore, the Member concerned by the request is also entitled to have himself represented by another Member at his hearing by the committee, even if he is not actually in custody[134].

In its exercise of the powers conferred on it by the second subparagraph of Rule 124(2) of the Rules of Procedure, the committee responsible has so far considered requests for waiver of immunity at meetings held in camera[135]. The purpose of this practice is to ensure confidentiality, in the interests of both the Member concerned and of the committee itself and its members, in such a way as to ensure a free and unbiased debate, with particular regard to cases of this nature.

The May 1992 revision of the Rules of Procedure also included the redrafting of the former Rule 5(3), introducing two new paragraphs:

'4. 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 form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate.

5. 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.'

Paragraph 4 seeks to resolve certain technical problems which had arisen from the obligation to hold a single vote on the proposal for a decision included in the report in cases where several different charges were involved. The new provision introduces the possibility, in such cases, of more than one proposal for a decision being submitted, 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 arrest or preventive detention, so as to ensure that the Member was not precluded from exercising his mandate by purely preventive measures prior to the final verdict[136]. The current wording of Rule 6(4) thus expressly permits this possibility.

133 Cf. Docs. A3-0269/92, A3-0270/92, A3-0020/93 and A3-0021/93.

134 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.

135 The principle of confidentiality with respect to matters concerning Members' immunity had already been adopted by the Committee on Legal Affairs and Citizens' Rights at its meeting of 18 September 1984.

136 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 C 12, 14.1.1985, p. 12); see also the report of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, doc. A3-0030/94 and the decision of 8 February 1994 (OJ C 61, 28.2.1994, p. 31).

Paragraph 5 enshrines the conventional principle whereby the committee is not empowered to pronounce on the guilt or innocence of the Member concerned, since this is obviously a matter for the judicial bodies.

The current text of Rule 6(6) incorporates the majority of the interpretations which had earlier been added as notes to the former Rule 5(4) and also adapts the wording to permit the possibility of more than one proposal for a decision being drawn up and considered; this paragraph was also amended in 1993 and 1999.

'6. 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 proposal to waive or uphold immunity.

Without prejudice to Rule 122, the Member whose immunity is subject to the request for a waiver shall not speak in the debate.

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

Pursuant to the interpretation adopted[137], *After Parliament has considered the matter,an individual 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.'*

The debate in plenary is thus organised in such a way as to satisfy the requirements of urgency and rationality while avoiding pointless delays and digressions.

The wording of the fourth subparagraph of paragraph 6 results from the decision adopted on 15 September 1993 as part of the general revision of the Rules of Procedure (Doc. A3-0240/93) which took place following the entry into force of the Treaty on European Union. The amendment adopted seeks to ensure that the vote on the proposal(s) for a decision set out in the report is held not immediately after the debate (at the first sitting following the day on which it was tabled) but at the first voting time following the debate at a time when a large number of Members is present.

The third subparagraph in this paragraph was introduced by decision of 11 March 1999 as part of the general revision of the Rules of Procedure in force since 1 May 1999.

In its report A3-0053/92 (rapporteur: Mr Gil-Robles Gil-Delgado), the Committee on the Rules of Procedure, the Verification of Credentials and Immunities had proposed 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 required by the Rules of Procedure ('if requested by at least one-fifth of the current Members of Parliament'), on the grounds that 'this modification, which is less drastic

137 Interpretation adopted in committee on 7 April 1981 and announced in plenary on 14 September 1981 (OJ C 260, 12.10.1981).

than the obligation to hold a secret ballot in all cases (of waivers of immunity), would make it possible to weigh up the advantages deriving from each system'[138].

The proposed amendment did not, however, secure in plenary the majority required for adoption.

Rule 6(7) states:

'7. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request, if immunity is waived, that he should be informed of any judicial rulings made as a consequence. 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 notification of the decision to the national authorities concerned. However, in cases where the decision taken involves the waiving of immunity, the President of Parliament is obliged to ask to be kept informed of the progress of the legal proceedings in question. The request for such information does not seek to publicise the judgments or to influence the decisions of the national courts, its aim is purely to permit greater awareness of the consequences of the decisions of Parliament and to obtain information which makes it possible to determine to what extent requests for waiver of immunity are in fact followed by legal proceedings.

The legitimacy of this provision is based on the general duty of cooperation between the Member States and the Community institutions enshrined 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 for all parties to carry out their tasks.

Finally, Rule 6(8) lays down that:

'8. 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[139].'

V. Parliamentary practice

1. During the period before the first direct elections in 1979, only one case arose in which waiver of immunity was requested[140]. Since 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, there has been a substantial increase in the number of requests for waiver of immunity.

138 A3-0053/92, Part B, Section IV - justification of Amendment 5, p. 13 (of English version).

139 See Chapter III above.

140 See Doc. 27/64, 6 May 1964 (decision of 15 June 1964), OJ C 109, 9.7.1964, p. 1669).

Parliamentary practice has now developed and consolidated a set of principles and criteria intended to serve as guidelines for the committee responsible.

The reports of that committee regularly refer to the principles which govern consideration of requests for waiver of immunity.

These principles are based in part on the case-law of the European Court of Justice (most of the cases concerned have already been referred to above). They may be summarised as follows:

(a) Purpose of parliamentary immunity

Parliamentary immunity is not to be seen as a privilege benefiting individual Members; it is designed to guarantee the independence of Parliament and its Members vis-à-vis other bodies. Accordingly, the date of the alleged offences is entirely relative. They may be prior to or subsequent to the election of the Member. What is paramount is the protection of the parliamentary institution through that of its Members.

(b) Renunciation of parliamentary immunity by an individual Member has no legal effect

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities takes the view that it must not deviate from the principle applied to date by the European Parliament whereby renunciation of parliamentary immunity by an individual Member has no legal effect.

(c) *Time-limit on immunity*

The case-law of the Court of Justice (see Chapter II), and the very purpose of parliamentary immunity show that it is effective throughout a Member's term of office, whether it involves the initiation of legal proceedings, investigations, execution of judgments already handed down, appeals or applications for judgments to be set aside.

(d) *Autonomous nature of immunity in the European Parliament compared with immunity in the parliaments of the Member States*

To quote the Donnez report cited above, the fact that subparagraph (a) of the first paragraph of Article 10 of the PPI refers to immunities granted to Members of national parliaments does not mean that the European Parliament may not establish its own rules, its own 'case-law', as it were; as for waiver of parliamentary immunity, parliamentary immunity, which is identical for Members of national parliaments and of the European Parliament, must not be confused with the procedures for waiver of parliamentary immunity which are a matter for each parliament concerned. The rules, which are the outcome of decisions taken on requests for waiver of immunity, tend to create a coherent notion of parliamentary immunity which should, as a matter of principle, be independent compared with the various practices in the national parliaments. If that were not the case, the disparities between Members of one and the same parliament would be accentuated on the grounds of their nationality. The Committee on the Rules of Procedure therefore thinks that the ground must be prepared for a genuine European Parliament immunity, one which is in principle autonomous while retaining the references to national parliaments set out in the Protocol on privileges and immunities, with particular regard to procedural issues.

The application of these principles has resulted in a constant element in Parliament's decisions, one which has become a fundamental criterion for consideration of the action to be taken on individual requests for waiver of immunity: in all cases where the charges against a Member are related to the exercise of a political activity, immunity is not to be waived. This criterion has been complemented by other considerations which may militate either for or against waiver of 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 (for example, anonymous accusations on which investigations are based, lengthy delay between the date on which the offence is alleged to have occurred and the date of submission of the request for waiver of immunity); in such cases immunity is not waived;

- the *particularly serious* nature of the charges, in which case immunity will be waived.

Along the same lines, the committee feels that, where a decision has to be taken on waiver of immunity of a Member, account must be taken of the fact that the legislations of the Member States other than the Member State of origin of the Member lay down lighter punishments for the contested action - or even do not regard it as an offence.

2. Between the date when direct elections to the European Parliament were introduced and 31 May 1999, a total of 88 requests for waiver of parliamentary immunity were considered[141]. Parliament decided in plenary against waiving immunity in 16 cases, i.e. 18.1% of the total.

Parliament adopted the recommendations of the committee responsible in all but five cases[142].

To date, the sphere of Members' political activities has been defined on an extremely broad and flexible basis. Accordingly, in the overwhelming majority of cases of requests for waiver of immunity, the committee responsible has taken the view that the imputed acts involved fell within the sphere of the Member's political activities.

A study by the European Parliament's Legal Service dated 19 April 1990 (PE 140.196) analyses the limits laid down by the committee responsible 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 activities, i.e.:

(a) in 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 organisations; drug-trafficking; participation in demonstrations equipped with dangerous objects which could constitute a threat to the lives of others;

(b) in 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 (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) in 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; nepotism involving financial favours; accounting fraud.

141 Cf. attached list. The total does not include a case of authorisation for a Member to make a statement (A3-0112/91 - decision of 14 May 1991, OJ C 158, 17.6.1991), as it was decided that this did not constitute a request for waiver of immunity. 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 C 345, 31.12.1985, p. 27 and OJ C 148, 16.6.1986, p. 16).

142 See A2-0195/85 (decision of 13 January 1986, OJ C 36, 17.12.1986); A2-0101/86 (decision of 6 October 1986, OJ C 283, 10.11.1986); A3-0088/89 (decision of 11 December 1989, OJ C 15, 22.1.1990); A3-0040/90 (decision of 12 March 1990, OJ C 96, 17.4.1990); and A3-0269/91 (decision of 23 October 1991, OJ C 305, 25.11.1991).

An analysis of the decisions on immunity taken by Parliament since the publication of the Legal Service's study shows clearly that that study is still valid.

Within the broad area of acts which may be considered as falling within the definition of Members' political activities, a significant group of cases may also be distinguished which may be placed in the category of what are referred to as 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 report (PE 141.446/fin.) which included 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 actions prejudicial to fundamental human rights.'

When rejecting requests for waiver of immunity, several reports of the committee responsible refer to the fact that the Member 'did not exceed the tone generally encountered in political debate'[143].

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[144]; delayed submission of the request in relation to the date of the alleged acts[145]; an apparent link between the date of the complaint and the Member's election to Parliament[146]; instigation of legal proceedings against the Member alone where more than one person could be considered liable[147]; 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 penalising the Member for his political activities[148].

In the same resolution, adopted at its meeting of 17-18 September 1990, the committee also took the view that the presumption of *'fumus persecutionis'* necessitated the existence of a precise, direct and reasonable link, on the one hand, between the circumstances surrounding the legal action and, on the other, 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 minor nature of the offences with which the Member is charged has also, in some instances, contributed to a decision to refuse a request for waiver of immunity[149]. Account has also 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.

143 See, for example, Docs. A3-0170/93 and A4-0076/99.

144 Doc. 1-0321/81.

145 Docs. 1-0321/81 and 1-0123/84; A2-0165/85, A2-0168/85, A2-0188/87, A2-0413/88, A3-0021/93 and A3-0169/93.

146 Doc. 1-0321/81.

147 A2-0191/85 and A2-0090/88.

148 A2-0165/85, A2-0034/86, A2-0042/89, A3-0247/90, A3-0076/92 and A3-0077/92.

149 See, for instance, the cases referred to in documents A2-0413/88 and A3-0009/91.

The acts in respect of which a request for waiver of a Member's immunity 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); membership of a criminal organisation ('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 support for the reconstitution of a dissolved fascist party (A2-0195/85)[150]; failure to report a road accident (A2-0176/87); 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) or groups (A3-0040/90); financial offences involving embezzlement and fraud (A3-0018/91); libellous material published in a newspaper (A3-0023/93)[151]; abuse of powers, embezzlement, use of and complicity in the drawing up of bogus documents (A3-0030/94); denying the Holocaust at a press conference held to mark the launch of a book on the Member's life and political activities (A4-0317/98); aggravated fraud (A4-0262/99).

150 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.

151 Since a judgment had been handed down to the effect that criminal liablity no longer existed on the grounds of the statute of limitations, it was important to ensure that the appeal proceedings brought by the Member concerned seeking acquittal on the grounds that no crime had actually been committed might run their course.

ANNEX 1

Requests to waive the immunity of Members of the European Parliament dealt with under the first directly elected Parliament and subsequent Parliaments up to May 1999

Session document	Date of decision	Decision	Date of publication
1-0072/81	7.4.1981	Not waived	OJ C 101, 04.05.1981, p. 24
1-0321/81	7.7.1981	Not waived	OJ C 234, 14.9.1981, p. 25
1-1082/81	9.3.1982	Not waived	OJ C 87, 5.4.1982, p. 37
1-0298/82	16.6.1982	Not waived	OJ C 182, 19.7.1982, p. 24
1-0832/82	16.11.1982	Not waived	OJ C 334, 20.12.1982, p. 25
1-1311/82	7.3.1983	Waived	OJ C 96, 11.4.1983, p. 13
1-0766/83	10.10.1983	Not waived	OJ C 307, 14.11.1983, p. 14
1-0123/84	9.4.1984	Not waived	OJ C 127, 14.5.1984, p. 8
2-1105/84	10.12.1984	Waived	OJ C 12, 14.1.1985, p. 12
A2-0013/85	15.4.1985	Waived	OJ C 122, 20.5.1985, p. 17
A2-0014/85	15.4.1985	Not waived	OJ C 122, 20.5.1985, pp. 17-18
A2-0046/85	10.6.1985	Not waived	OJ C 175, 15.7.1985, p. 23
A2-0105/85	7.10.1985	Waived	OJ C 288, 11.11.1985, p. 14
A2-0164/85	9.12.1985	Not waived	OJ C 352, 31.12.1985, p. 16
A2-0165/85	9.12.1985	Not waived	OJ C 352, 31.12.1985, pp. 16-17
A2-0168/85	9.12.1985	Not waived	OJ C 352, 31.12.1985, p. 17
A2-0191/85	13.1.1986	Waived	OJ C 36, 17.2.1986, p. 14
A2-0195/85	13.1.1986	Waived	OJ C 36, 17.2.1986, pp. 14-15
A2-0214/85	17.2.1986	Not waived	OJ C 68, 24.3.1986, p. 21
A2-0033/86	12.5.1986	Not waived	OJ C 148, 16.6.1986, p. 15
A2-0034/86	12.5.1986	Not waived	OJ C 148, 16.6.1986, pp. 15-16
A2-0070/86	7.7.1986	Waived	OJ C 227, 8.9.1986, p. 14
A2-0101/86	6.10.1986	Not waived	OJ C 283, 10.11.1986, p. 13

A2-0145/86	10.11.1986	Not waived	OJ C 322, 15.12.1986, p. 17
A2-0220/86	16.2.1987	Not waived	OJ C 76, 23.3.1987, p. 21
A2-0221/86	16.2.1987	Not waived	OJ C 76, 23.3.1987, pp. 21-22
A2-0036/87	11.5.1987	Not waived	OJ C 156, 15.6.1987, p. 18
A2-0037/87	11.5.1987	Not waived	OJ C 156, 15.6.1987, pp. 18-19
A2-0038/87	11.5.1987	Not waived	OJ C 156, 15.6.1987, p. 19
A2-0099/87	6.7.1987	Not waived	OJ C 246, 14.9.1987, p. 14
A2-0176/87	26.10.1987	Waived	OJ C 318, 30.11.1987, p. 9
A2-0188/87	16.11.1987	Not waived	OJ C 345, 21.12.1987, p. 14
A2-0226/87	14.12.1987	Not waived	OJ C 13, 18.1.1988, p. 18
A2-0274/87	8.2.1988	Not waived	OJ C 68, 14.3.1988, p. 16
A2-0309/87	7.3.1988	Not waived	OJ C 94, 11.4.1988, p. 15
A2-0005/88	11.4.1988	Not waived	OJ C 122, 9.5.1988, p. 15
A2-0090/88	13.6.1988	Not waived	OJ C 187, 18.7.1988, p. 16
A2-0130/88	4.7.1988	Waived	OJ C 235, 12.9.1988, p. 13
A2-0191/88	10.10.1988	Not waived	OJ C 290, 14.11.1988, p. 13
A2-0217/88	24.10.1988	Waived	OJ C 309, 5.12.1988, p. 11
A2-0266/88	12.12.1988	Not waived	OJ C 12, 16.1.1989, p. 19
A2-0340/88	16.1.1989	Not waived	OJ C 47, 27.2.1989, p. 15
A2-0413/88	13.3.1989	Not waived	OJ C 96, 17.4.1989, p. 16
A2-0042/89	10.4.1989	Not waived	OJ C 120, 16.5.1989, p. 18
A3-0067/89	20.11.1989	Not waived	OJ C 323, 27.12.1989, p. 16
A3-0088/89	11.12.1989	Waived	OJ C 15, 22.1.1990, p. 18
A3-0040/90	12.3.1990	Waived	OJ C 96, 17.4.1990, p. 20
A3-0229/90	8.10.1990	Not waived	OJ C 284, 12.11.1990, p. 21
A3-0247/90	22.10.1990	Not waived	OJ C 295, 26.11.1991, p. 9
A3-0377/90	21.1.1991	Not waived	OJ C 48, 25.2.1991, p. 14

A3-0018/91	18.2.1991	Waived	OJ C 72, 18.3.1991, p. 16
A3-0009/91	18.2.1991	Not waived	OJ C 72, 18.3.1991, p. 16
A3-0066/91	15.4.1991	Not waived	OJ C 129, 20.5.1991, p. 22
A3-0068/91	15.4.1991	Not waived	OJ C 129, 20.5.1991, p. 22
A3-0067/91	15.4.1991	Not waived	OJ C 129, 20.5.1991, p. 23
A3-0230/91	7.10.1991	Not waived	OJ C 280, 28.10.1991, p. 56
A3-0229/91	7.10.1991	Not waived	OJ C 280, 28.10.1991, p. 56
A3-0303/91	18.11.1991	Not waived	OJ C 326, 16.12.1991, p. 19
A3-0038/92	10.2.1992	Not waived	OJ C 67, 16.3.1992, p. 16
A3-0039/92	10.2.1992	Not waived	OJ C 67, 16.3.1992, p. 16
A3-0077/92	9.3.1992	Not waived	OJ C 94, 13.4.1992, p. 17
A3-0076/92	9.3.1992	Not waived	OJ C 94, 13.04.1992, p. 17
A3-0196/92	8.6.1992	Not waived	OJ C 176, 13.7.1992, p. 16
A3-0269/92	26.10.1992	Not waived	OJ C 305, 23.11.1992, p.
A3-0270/92	26.10.1992	Not waived	OJ C 305, 23.11.1992, p.
A3-0383/92	14.12.1992	Not waived	OJ C 21, 25.1.1993
A3-0407/92*	14.12.1992	Not waived	OJ C 21, 25.1.1993
A3-0020/93	8.2.1993	Not waived	OJ C 72, 1.3.1993, P. 19
A3-0021/93	8.2.1993	Not waived	OJ C 72, 15.3.1993, p. 19
A3-0023/93	8.2.1993	Waived	OJ C 72, 15.3.1993, p. 20
A3-0142/93	24.5.1993	Not waived	OJ C 176, 28.6.1993, p. 19
A3-0169/93	21.6.1993	Not waived	OJ C 194, 19.7.1993, p. 17
A3-0170/93	21.6.1993	Not waived	OJ C 194, 19.7.1993, p. 17

* This request concerns three Members.

A3-0255/93	25.10.1993	Not waived	OJ C 315, 22.11.1993, p. 19
A3-0030/94	8.2.1994	Waived	OJ C 61, 28.2.1994, p.31
A3-0121/94	9.3.1994	Not waived	OJ C 91, 28.3.1994, p.54
A3-0167/94	19.4.1994	Not waived	OJ C 128, 9.5.1994, p. 89
A4-0023/96	12.2.1996	Not waived	OJ C 65, 4.3.1996, p.12
A4-0311/97	21.10.1997	Not waived	OJ C 339, 10.11.1977, p. 27
A4-0312/97	21.10.1997	Not waived	OJ C 339, 10.11.1997, p.27
A4-0154/98	12.5.1998	Not waived[152]	OJ C 167, 1.6.1998, p.26
A4-0155/98	12.5.1998	Not waived[152]	OJ C 167, 1.6.1998, p.25
A4-031798	6.10.1998	Waived	OJ C 328, 26.10.1998, p.31
A4-0076/99	9.3.1999	Not waived	OJ C 175, 21.6.1996, p.67
A4-0210/99	4.5.1999	Not waived	OJ C 279, 01.10.1999, p. 100
A4-0262/99	4.5.1999	Waived	OJ C 279, 01.10.1999, p. 100

152 In these two decisions, Parliament, on a proposal from the appropriate committee, elected 'not to take a decision on the request for waiver of immunity at this stage of the proceedings.' The decisions specified that, to enable the request to be supported by additional evidence and, if necessary, resubmitted, Parliament would not object if the magistrates concerned chose to hear the Members in question provided that they did not prefer charges or resort to any form of coercion.

EUROPEAN PARLIAMENT
Relevant legal provisions

ANNEX 2

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 3 Privileges and immunities

1. Members shall enjoy privileges and immunities in accordance with the Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities.

Rule 6 Waiver of immunity

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 announced in Parliament and referred to the committee responsible.

2. The committee shall consider such requests without delay and in the order in which they have been submitted.

3. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary for it to form an opinion on whether immunity should be waived. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

4. 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 form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate.

Where the request for the waiver of immunity entails the possibility of obliging the Member to appear as a witness or expert witness thereby depriving him of his freedom, the committee shall:
- *ascertain, before proposing that immunity be waived, that the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to fulfil his parliamentary obligations;*
- *seek clarification regarding the subject of the statement, in order to ensure that the Member is not obliged to testify concerning information obtain confidentially in the exercise of his mandate which he does not see fit to disclose.*

5. 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.

6. 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 proposal to waive or uphold immunity.

Without prejudice to Rule 122, the Member whose immunity is subject to the request for a waiver shall not speak in the debate.

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

After Parliament has considered the matter, an individual 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.

7. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request, if immunity is waived, that he should be informed of any judicial rulings made as a consequence. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate.

8. 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.

The President shall ensure that recourse is had to this right where the aim of the arrest or prosecution is to make the Member appear as a witness or expert witness against his will, without his immunity having been waived beforehand.

BIBLIOGRAPHY

1. COMPARATIVE AND GENERAL STUDIES

- COUNCIL OF EUROPE, European Commission for Democracy through Law (Venice Commission) Report on the regime of parliamentary immunity *CPL-INF(96) 7*, Strasbourg, June 1996.

- DE VERGOTTINI, G., *Diritto costituzionale comparato*, Padua, 1981, pp. 270-271.

- EUROPEAN PARLIAMENT (Legal Service), "Le statut des parlementaires dans les États membres: irresponsabilité et inviolabilité", Committee on the Rules of Procedure, the Verification of Credentials and Immunities, 26 April 1990, PE 140.198.

- FERNÁNDEZ-MIRANDA y CAMPOAMOR, Alfonso, "La inmunidad parlamentaria en la actualidad", in *Revista de estudios políticos* (1977), No. 215.

- FERNÁNDEZ-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.

- FRENCH SENATE, "L'immunité parlementaire" (étude comparative), *Division des Études de législation comparée*, No 56, May 1994.

- GARCÍA, Eloy, "Crisis jurídica y crisis política de la inmunidad parlamentaria", in *Revista de las Cortes Generales*, No 18, 1989, pp. 67-118.

- GARCÍA, Eloy, "La problemática jurídico-política de la inmunidad parlamentaria", in *Boletín mejicano de derecho comparado*, No 64, 1989, pp. 95-125.

- GIL-ROBLES GIL-DELGADO, J-M. and others, *Los parlamentos de Europa y el Parlamento europeo*, Madrid, 1997, pp. 109-115.

- HERZOG, J.B., "Les immunités parlementaires en droit comparé", in *Revue internationale d'histoire politique et constitutionnelle,* 1956, pp. 73 ff.

- INTER-PARLIAMENTARY UNION, *Les Parlements dans le monde*, Paris, PUF.

- INTER-PARLIAMENTARY UNION, Association of Secretaries General of Parliaments, *Constitutional and Parliamentary Information,* No 175, first half-year 1998, Final report presented by Mr Robert Myttenaere, Deputy Secretary-General of the Chamber of Representatives, Belgium, adopted at the Moscow session (September 1998), on the immunities of Members of Parliament.

- JOTTI, N., "Tema di privilegi e immunità parlamentari", in *Boll. informaz. cost. e parl.*, No 3, 1982, pp. 107 ff.

- KAHN, A.A., "Les privilèges et immunités du Parlement et des parlementaires", in *Informations constitutionnelles et parlementaires*, No 110, 1977, pp. 75-148 (also exists in English).

- MODENA, M, "Ineleggibilità e incompatabilità parlamentari (Italia e paesi della Comunità Europea)", *Senato della Repubblica, Servizio Studi,* Rome, 1984.

- PIZZORUSSO, Alessandro, "Dissonanza e incomprensioni tra la concezione costituzionalistica delle immunità", in *Rivista Italiana di Diritto e Procedura Penale,* No 2, 1984, pp. 566-568.

- PIZZORUSSO, Alessandro, "Las inmunidades parlamentarias - un enfoque comparatista", in *Revista de las Cortes Generales*, No 2, 1984, pp. 27-50.

- TOMMASINI, G., "Immunité parlementaire", in *Informations constitutionnelles et parlementaires,* No 8, 1951, pp. 237-251 (also exists in English).

2. MEMBER STATES

Austria

- BERCHTOLD, Klaus, "Die Neuordnung der Immunität", *Österreichische Juristen-Zeitung 34,* 1979*,* pp. 505-509.

- FUCHS, Helmut, "Zur Neuregelung der Abgeordnetenimmunität", *Österreichische Juristen-Zeitung* 35, 1980, pp.253-255.

- KOPIETZKI, Christian, "Grenzen der außerberuflichen Immunität der Abgeordneten", *Österreichische Zeitschrift für öffentliches Recht und Völkerrecht 37,* 1986, pp. 101-145.

- ORTNER, Gerold/WIELINGER, Gerhart (ED.), *Die Immunität von Abgeordneten: Wohltat oder Plage?* Graz, 1990.

Belgium

- GOEDERTIER, G., "De nieuwe regeling van de [parlementaire] onschendbaarheid", *Chroniques de Droit Public*, 1998, No 4, pp. 424-444.

- JONGEN, F., "Faut-il supprimer les immunités parlementaires?" *Journal des Procès,* 1994, No 253, pp. 12-14.

- LAGASSE, N., "Le nouveau régime de l'immunité parlementaire" *Journal des Procès,* 1997, No 325, pp. 10-13.

- MYTTENAERE, R., "Le système belge en matière d'immunités des ministres et des parlementaires", *Informations constitutionnelles et parlementaires*, 1997, pp. 211-218.

- MYTTENAERE, R., "Les immunités des parlementaires", *Informations constitutionnelles et parlementaires*, 1999, awaiting publication.

- VANDE LANOTTE, J. and GOEDERTIER, G., "De parlementaire onschendbaarheid", in *Het federale België in de pratijk, de werking van de wetgevende vergaderigen na de verkiezingen van 21 mei 1995,* Leus K. and Veny L. (ed.), Bruges, die Keure, 1996, pp. 61-90.

- VENY, L., "De parlementaire onschendbaarheid in een nieuw kleedje", note under Ghent, 8 November 1996, *Algemeen Juridisch Tijdschrift,* 1996-97, pp. 488-490.

- VERDUSSEN, M., "Une inviolabilité parlementaire tempérée", *Journal des Tribunaux*, 1997, pp. 673-679.

- VUYE, H., "Les irresponsabilités parlementaires et ministérielles": les articles 58, 101 alinéa 2, 120 et 124 de la Constitution', *Chroniques de Droit Public*, 1997, No 1, pp. 2-28.

Denmark

- GERMER, Peter, Statsforfatningsret, Jurist- og Økonomforbundets Forlag, vol. I, Copenhagen, 1988, pp. 73-78.

- ROSS, Alf, Dansk Statsforfatningsret, 3. gennemarbejdede udgave ved Ole Espersen, Nyt Nordisk Forlag Arnold Busck, Copenhagen, 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, Christian Ejlers Forlag, Copenhagen, 1989, vols. 1-4.

Finland

- VALTIOPÄIVÄJÄRJESTYS, Annettu Helsingissä tammikuun, 13 päivänä 1928.

- SALERVO, Olavi, Kansanedustajan Kelpoisuus, toimikausi ja asema. (Suoman kansanedustuslaitoksen historia, X. Helsinki, 1977, pp. 128-171).

France

- Entry: "Immunité parlementaire", in *Le Dictionnaire constitutionnel*, PUF, 1992.

- GAUDEMET, Paul-Marie, entry: "Immunités", in *Encyclopédie Dalloz de Droit Criminel*.

- ISAR, Hervé, "Les immunités parlementaires" *(Revue française de droit consitutionnel* No 20, 1994).

- PRELOT, M., *Institutions politiques et droit constitutionnel*, Paris, Dalloz, 1972 (pp. 763-767: Les immunités parlementaires).

- SOULIER, G., "L'inviolabilité parlementaire en droit français", LGDJ 1969.

- Le Statut du Député, (C*onnaissance de l'Assemblée*, *No 7*, Assemblée Nationale September 1997).

Germany

- BOCKELMANN, Paul, *Die Unverfolgbarkeit der Abgeordneten nach deutschem Immunitätsrecht*, Vondenboek & Ruprecht, Göttingen, 1951.

- BUTZER, Hermann, *Immunität im demokratischen Rechtsstaat, Verfassungsgrundlagen und Parlamentspraxis des Deutschen Bundestages*, Duncker & Humblot, Berlin, 1991.

- BÜCKER, Joseph, "Aktuelle Fragen der Immunität und Indemnität", in *: Plenarsitzungen des Deutschen Bundestages*, Festgabe für Werner Blischke, ed. Hans-Achim Roll, Duncker & Humblot, Berlin, 1992.

- DI CIOLO, Vittorio, coll.; SERAFIN Elisabetta, "Le immunità parlamentari nella Repubblica federale di Germania", in *Il Foro Amminstrativo*, 1983, No 7-8, pp. 1811-1834.

- FRIESENHAHN, Ernst Rudolf, "Zur Indemnität der Abgeordneten in Bund und Ländern", in *Die Öffentliche Verwaltung*, 1981, No 13-14.

- HEYDLAUF, Rolf, *Die Praxis des Bundestages in Immunitätsangelegenheiten,* Diss. Freiburg im Breisgau, 1974.

- HILGENDORF, Eric*, Die Entwicklungsgeschichte der parlamentarischen Redefreiheit in Deutschland*, Verlag Peter Lang G.m.b.H., Frankfort am Main, 1991.

- JENDRAL, Hans-Jürgen, *Immunität – noch zeitgemäß? Kritische Untersuchung eines immerwährendes Privilegs des Parlaments*, Haag + Herchen, Frankfort am Main, 1993.

- KLEIN, Hans-Hugo, "Indemnität und Immunität", *in Parlamentsrecht und Parlamentspraxis in der Bundesrepublik Deutschland*, ed. SCHNEIDER Hans-Peter and ZEH Wolfgang, Walter de Gruyter, Berlin and New York, 1989, § 17, pp. 555-592.

- WURBS, Richard, "Regelungsprobleme der Immunität und der Indemnität in der parlamentarischen Praxis", *Beiträge zum Parlamentsrecht*, vol. 13,Duncker & Humblot, Berlin, 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.

Ireland

- SMYTH, J. McG., "The theory and practice of the Irish Senate", Institute of Public Administration, Dublin, 1972, pp. 44-45.

Italy

- AZZARITI, G., "Giurisdizione e politica nella giurisprudenza costituzionale", *Riv. Dir. Cost.,* 1993, 93 ff. Ed and also. 127 ff.

- DI MUCCIO, P., "L'insindacabilità dei parlamentari: una introduzione allo studio dell'articolo 68, primo comma", della Costituzione, *Diritto e Società*, 1986, pp. 681.

- GRISOLIA, M.C., "L'insindacabilità dei membri delle Camere 'per le opinioni espresse e i voti dati' ", *Diritto e società*, 1995, pp. 25 ff.

- GUARINI, C.P., "L'ordine delle competenze di Camera e autorità giudiziaria in materia di insindacabilità parlamentare"*, Rass. Parl.,*, 1998, 945 ff.

- LASORELLA, G.*,* "Le 'opinioni espresse nell'esercizio delle funzioni parlamentari' ex art. 68, primo comma, della Costituzione, tra Camere, giudici e Corte costituzionale", *Giur. Cost.,* 1999, fasc. II.

- LONG, G., "Commento all'articolo 68 della Costituzione in Commentario alla Costituzione", edited by G. Branca, *Le Camere,* Tomo II, Bologna, Zanichelli, 1986, pp. 185 ff.

- MENCARELLI, A., "Insindacabilità ex art. 68 comma 1 Cost. O vizio formale della legge per violazione del principio della personalità del voto parlamentare?", *Giurisprudenza Italiana,* 1997, n. 1, pt. 1, p. 291.

- MIDIRI, M., "Autorizzazioni a procedere (aggiornamento 1997)", *Enc. Giur*., I, ad vocem*,* pp.1 ff.

- MIDIRI, M., *Autonomia costituzionale delle Camere e potere giudiziario,* Padova, 1999, pp. 293 ff and 355 ff.

- PACE, A., "Il nulla osta parlamentare acché il giudice possa decidere la causa del merito: una questione ex. Art. 24, comma 1, 68, comma 1, e 101, comma 2, Cost. Ormai da archiviare?", *Giur. Cost.,* 1996, I, pp. 1132 ff.

- PANIZZA, S., "La disciplina delle immunità parlamentari tra Corte e legislatore (costituzionale e ordinario)", *Giur. Cost*., 1994, pp. 592 ff.

- POSTERARO, F., "Prerogative parlamentari", *Enc. Giur.*, ad vocem, pp.1 ff.

- PRESUTTI, A., "Autorizzazione a procedere e riforma dell'immunità parlamentare"*, Giur. Cost.,* 1993, p. 1437.

- ROMBOLI, R., "La 'pregiudiziale parlamentare' per le opinioni espresse ed i voti dati dai membri delle Camere nell'esercizio delle loro funzioni: un istituto nuovo da ripensare (e da abolire)", *Foro Italiano*, 1994, I, pp. 995 ff.

- ROMBOLI, R., "Immunità parlamentare: un difficile bilanciamento con qualche contraddizione tra autonomia delle Camere, tutela della sfera di attribuzioni alla Autorità giudiziaria e ruolo della Corte Costituzionale"*, Foro Italiano,* 1997, n. 1, pt. 1, p. 2361.

- TRAVERSA, S., "Immunità parlamentare", *Enciclopedia del Diritto*, XX, 1970, pp. 178 ff.

- VALASTRO, A., "La prerogativa parlamentare della insindacabilità all'indomani della L. cost. n. 3 del 1993", *Giur. Cost.*, 1994, pp. 3072 ff.

- ZAGREBELSKY, G., *Le immunità parlamentari*, Turin, Einaudi, 1979.

- ZAGREBELSKY, G., "La riforma dell'autorizzazione a procedere", *Il Corr. Giur*., 1994, pp. 282 ff.

- ZANON, N., "Parlamentare (Status del)", *Digesto IV (discipline pubblicistiche)*, vol. X, pp. 616.

Luxembourg

- MAJERUS, P., *L'État luxembourgeois*, Luxembourg, Imprimerie St. Paul, 1970 (p. 186: Immunité parlementaire).

Netherlands

- KRANENBURG, R., *Het Nederlandse Staatsrecht*, Tjeenk Willink, Haarlem, 1958, pp. 185-188.

- RAALTE, E. van, *Het Nederlandse Parlement*, Staatsuitgeverij, The Hague, 1971, pp. 178-181.

- RAALTE, E. van, *The Parliament of the Kingdom of the Netherlands*, Tjeenk Willink, Zwolle, 1977, pp. 279-280.

Portugal

- AMADO GOMES, Carla, *As imunidades parlamentares no Direito Português*, Coimbra Editora, 1998.

- AMARAL, Fernando, *Notas e Comentários ao Estatuto dos Deputados*, 1995 edition.

- 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.

Spain

- ALBA NAVARRO, Manuel : "Prerrogativas parlementarias y jurisprudencia constitucional", *CEC*, Madrid, 1994.

- BIRIEGO GONZÁLEZ 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 MARTÍNEZ, 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.

- FERNÁNDEZ-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.

- FERNÁNDEZ-MIRANDA y CAMPOAMOR, Alfonso, *Revista de derecho público* - comentarios a las leyes políticas - Constitución española de 1978, vol. VI, pp. 305-376.

- GARCÍA, Eloy, "Inmunidad parlamentaria y Constitución democrática", in *Revista de la Facultad de Derecho de la Universidad Complutense,* 1989, No 15 (monograph), pp. 439-467.

- GONZÁLEZ CUSAC, J.C. and CUERDA ARNAU, M.L, "Aproximación al Derecho Penal parlamentario : inviolabilidades", *RD. Pco INAP*. May-August 1997.

- MARTÍN OSTOS, José de los Santos, "Enjuiciamiento penal de diputados y senadores en la Constitución española de 1978", in *Revista de derecho procesal iberoamericana,* 1981, 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.

- PEÑARANDA RAMOS, José Luis, "La dimensión actual de las prerrogativas parlamentarias" *'Comentarios a la Constitutción Española de 1978'* directed by Óscar Alzaga Villaamil, Volume 6, pp. 325-388, Edersa, Madrid, 1998.

- PORTERO GARCÍA, J.R., *Inviolabilidad y Inmunidad parlamentaria*, Málaga, 1977.

- 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.

- PUNSET BLANCO, Ramón, *'Inmunidad parlamentaria y jurisprudéncia constitucional', CEC,* Madrid, 1994.

- SANTAOLALLA LOPEZ, F., *Derecho parlamentario español*, Madrid, 1984, pp. 83 ff.

Sweden

- PETRÉN, Gustaf och RAGNEMALM, Hans, *Sveriges grundlagar*, LiberFörlag, Stockholm 1980.

- STRÖMBERG, Håkan, *Sveriges författning*, 4th edition, Studentlitteratur, Lund 1971.

- Regeringsformen och Riksdagsordningen, SOU 1972, p.15.

United Kingdom

- ERSKINE MAY's '*Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (Buterworths) (22nd edition) and, in particular, pp.168-182.

- WADE and BRADLEY, *Constitutional and Administrative Law,* 11th edition (Longman 1993) Chapter 11.

- HOOD, Phillips and JACKSON, *Constitutional and Administrative Law, 7*th edition (Sweet and Maxwell 1987), Chapter 12.

3. EUROPEAN PARLIAMENT

- CAVERO GÓMEZ, Manuel, "La inmunidad de los diputados del Parlamento Europeo2, 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 drawn up on behalf of 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*, March 1987, Université des Sciences Sociales, Toulouse, pp. 174-242.

- SCHULTZ-BLEIS, C., *Die parlamentarische Immunität der Mitglieder des Europäischen Parlaments*, Duncker & Humblot, Berlin, 1995.
-
- SENÉN HERNÁNDEZ, 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 waiver of the immunity of Members of the European Parliament and the amendments to the relevant provisions of the EP's Rules of Procedure (see Part Two of this document).