

Immunities in Ukraine – a Comparative Perspective

I. Corruption-safeguards and immunity: two competing principles to protect the Parliament

II. Overview: Ukraine¹ – European Parliament² – Germany³

	UA	EC	D
Non-liability (MPs)			
- Voting	X	X	X
- statements in Parliament	X	X	X
- exception: defamation/insult	X	-	X
Inviolability			
Applicability			
- President (of State)	X	-	X
- MPs	X	X	X
- Judges	X	X	-
Scope			
- criminal procedure and punishment	X	X	X
- search and seizure, surveillance, etc.	X	X	X
- exceptions			
o caught in act of committing	-	X	X
o initiation of investigation	X	-	X
- right of reclamation	-	-	X
Procedure			
- obligatory statement by MP	X	-	-
- hearing of evidence	X	-	-
- reference to Parliamentary Committee	X	X	X
- procedural time limit (days)	32	-	-
- majority decision by Plenary	X	X	X

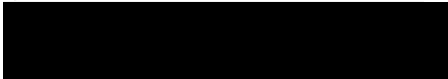
1 Based on the GRECO Evaluation Report on Ukraine, I-II Rep (2006) 2E, [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-2\(2006\)2_Ukraine_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-2(2006)2_Ukraine_EN.pdf).

2 Case presented is: MEP not being on territory of his Member State.

3 Including the decision of the Bundestag relating to the waiver of immunity during electoral term.

III. Possible models of inviolability (*national examples⁴ in brackets*)

1. **Purpose of Inviolability:** Individual right of MP or institutional right of Parliament
2. **Scope**
 - a. Civil actions (*UK*) or criminal actions (*France*) or both (*Spain, Sweden*)
 - b. Detention and/or imprisonment only (*France, Finland*)
 - c. Investigation and opening of procedures (*Spain, Belgium, Denmark*)
 - d. Prohibition of searches on the MPs' premises (*Germany*)
3. **Exceptions**
 - a. Caught in act of committing – „flagrante delicto“ (*France, Germany, Spain*); in *Italy* and *Finland* a „vital need“ is necessary for detention
 - b. Minor offences (*Germany*)
 - c. Serious crimes (*U.S.* – treason, crime or disturbance of peace; *France* – criminal offences; *Sweden* – two years of imprisonment, *Ireland* – treason)
 - d. Final verdict (*France*)
 - e. Plea of guilt by member of parliament (*Sweden*)
 - f. Acts before entering into office (*France*)
 - g. Acts outside Parliament except on the way to it (*U.S.*)
4. **Period of Protection**
 - a. Parliament in session (*Belgium, Luxembourg*)
 - b. Session and recess (*France, Denmark, Spain, Greece, Italy, Germany, Portugal*)
5. **Effect**
 - a. Statutory application (*Germany*)
 - b. Application on request of Parliament (German states *Hamburg, Brandenburg*; *France*: detention and imprisonment – statutory, interrogation – to be invoked)
6. **Procedures**
 - a. Right of motion (*France* – Attorney General; *Germany* – various people)
 - b. Deciding body: presidium (*France*); plenary (*France* in delaying procedures, *Spain*); court (*Cyprus* – Supreme Court)
 - c. Discretion of body or statutory limitations
 - d. Minority opinion of committee members (*Italy*)

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- e. Right of MP or attorney to be present (*Ukraine*: MP is present at hearing; *Germany*: no right of MP to speak on merits of the case)
 - f. Timeframe: *Austria* (no decision by Parliament within eight months, immunity is lifted), *Spain* (no decision by Parliament within 60 days, request cancelled)
 - g. Publicity of decision: (*France* – secret deliberation, public decision; *Spain* – „in camera“)
 - h. Vote: secret (*Spain, Greece, Italy*) or open.
 - i. Quorum: simple majority (*Germany*) or specific majority (*Poland* – 2/3, *Sweden* – 5/6 of those present)

IV. Fighting corruption: the question of inviolability

- Inviolability does not per se render prosecution impossible, only during office.
- But: It can be an obstacle for quickly and directly collecting evidence.
- Therefore rules of inviolability must admit collecting evidence as much as possible.

V. Possible modifications

1. “Lifting-Inviolability-Model”

→ Advantage: full control by Parliament over inviolability.

a. Narrowing the scope

- i. Exception: flagrante delicto
- ii. No immunity for judges

b. Speedier procedure

- i. No hearing of evidence: immunity as institutional, not as individual right
- ii. No statement by MP: immunity as institutional, not as individual right
- iii. Narrow time limit or fast track decision for corruption offences – decision by presidium, court, committee

2. “Reclaiming-Inviolability-Model”

→ Advantage: quick and full investigation of corruption crimes, at the same time adequate control by Parliament over inviolability.

a. Quorum: majority or minority

b. Recess: committee or presidium

VI. Annex: German regulations

Basic Law for the Federal Republic of Germany⁵, Article 46

(1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a **vote** cast or for any **speech** or **debate** in the Bundestag or in any of its committees. This provision shall not apply to **defamatory insults**.

(2) A Member may not be called to **account** or **arrested** for a punishable offense without permission of the Bundestag, unless he is apprehended while committing the offense or in the course of the following day.

(3) The permission of the Bundestag shall also be required for any other restriction of a Member's **freedom** of the **person** or for the initiation of proceedings against a Member under Article 18.

(4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be **suspended** at the **demand** of the **Bundestag**.

Rules of Procedure of the German Bundestag⁶, Annex 6, Decision of the Bundestag relating to the waiver of immunity of Members of the Bundestag

1. The Bundestag shall grant permission, up to the end of this electoral 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, 187 a, paragraph (1) and 188, paragraph (1) of the Penal Code).

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 therefore. The right of the **Bundestag** to **demand** the **suspension** of proceedings (Article 46, paragraph (4) of the Basic Law) shall remain unaffected.

In such cases preliminary investigations may be initiated at the earliest **48 hours** after receipt of the notification by the President of the German Bundestag. In calculating the time limit, Sundays, public holidays and Saturdays shall not be taken into account. The President of the German Bundestag can, in agreement with the chairperson of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure, provide for an appropriate extension of the time limit.

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;
- (b) in proceedings pursuant to the Regulatory Offences Law, 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 Law);
- (c) measures taken in the course of a preliminary investigation and involving deprivation or restriction of liberty.
- (d) the continuation of preliminary investigations the suspension of which the Bundestag demanded in the previous electoral term pursuant to Article 46, paragraph (4) of the Basic Law.

[...]

[highlighting in bold letters by author]

⁵ http://www.bundestag.de/htdocs_e/parliament/function/legal/germanbasiclaw.pdf.

⁶ http://www.bundestag.de/htdocs_e/parliament/function/legal/rules.pdf.