



Strasbourg, 24 January 2006

**Opinion no. 361 / 2005**

Restricted  
**CDL(2006)002**  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT DECISION  
OF THE ALBANIAN PARLIAMENT  
ON THE LIMITATION OF PARLIAMENTARY IMMUNITY  
AND THE CONDITIONS FOR THE AUTHORIZATION  
TO INITIATE INVESTIGATION IN RELATION  
WITH CORRUPTION OFFENCES AND ABUSE OF DUTY**

**REPUBLIC OF ALBANIA****ASSEMBLY****DECISION****No \_\_\_\_\_, on \_\_\_/\_\_\_/ 2005****ON THE LIMITATION<sup>1</sup> OF PARLIAMENTARY IMMUNITY AND THE  
CONDITIONS FOR THE AUTHORIZATION TO INITIATE INVESTIGATION IN  
RELATION WITH CORRUPTION OFFENCES AND ABUSE OF DUTY**

Pursuant to the article 78 of the Constitution of the Republic of Albania and article 88 and 117 of the Regulation of the Assembly of the Republic of Albania, upon proposal by of a group of members of Parliament

**THE ASSEMBLY OF  
THE REPUBLIC OF ALBANIA****DECIDED****Article 1****Limitation / Waiver from the Immunity**

Waiver from the immunity of the members parliament for the initiation investigation of the criminal offenses related to corruption and the abuse of duty.

Waiver has effect for the duration of the mandate in accordance with the conditions, procedures and limitations specified in this decision.

**Article 2****Term and Procedure to Initiate Investigation**

Following approval of this decision to waive immunity of the members of parliament, initiation of investigation on criminal offenses on which it is decided the limitation from immunity, may be effected not earlier than 48 hours after a written notice has been served/submitted by the Prosecutor General to the Speaker of the Parliament.

The Speaker, within 48 hours following the receipt of the written notice informs and sends relevant the materials to the Regulation, Mandates and Immunity Committee, as well as to the particular Member of Parliament against whom an investigation has been initiated.

---

<sup>1</sup>In this text "waive(r)" is used to mean "limitation" based on a voluntary act. In the deposited text word "limit(tation)" to comply with terminology used in Council of Europe Resolution 97(24).

### **Article 3**

#### **Measures and Procedural Actions that Cannot be Carried Out**

Waiver from immunity in accordance with Article 1, does not apply to the following measures and procedural actions:

- a. coercive measures leading to restriction of the freedom of movement;
- b. search of the residence or of the person;
- c. interception/surveillance of the person;
- ç. placing the person under arrest ;
- d. initiate trial proceedings.

### **Article 4**

#### **Lifting of Immunity**

Pursuant to Article 1, when after limitation from immunity investigation is not sufficient, the Assembly may decide to lift immunity. The removal of the immunity is individual and made upon the request of the Prosecutor General.

Removal of immunity is done to authorize:

- a. Taking of measures and implementation of procedural actions stipulated in the items “a”, “b”, “c” and/or “d” of the article 3 for the criminal offenses related to corruption and abuse of duty, when the Assembly has decided to limit immunity in accordance with Article 1;
- b. Prosecution for all other types of criminal offenses, including, as case may be, the implementation of the procedural actions stipulated in the items “a”, “b”, “c” and/or “d” of the Article 3;
- c. Arrest on any criminal charge/offense.

Depending on each case, removal of immunity is valid:

1. Until completion investigation;
2. Until removal of immunity is replaced with another authorization to lift immunity from arrest (item “ç” of Article 3);
3. After a decision on innocence has been obtained, or a final decision to terminate the case has been delivered / given/ or taken.
4. Throughout duration of the mandate.

### **Article 5**

#### **Time- limit and Action on the Regulation of the Assembly**

This decision is effective for the entire duration of the legislature and forms an integral part of the Assembly’s Regulation, as “Annex 1”.

The procedure of issuing the authorization stipulated by the articles 118-119 of the Assembly's Regulation shall be applied in accordance with the circumstances and conditions stipulated in this decision.

### **Article 6**

#### **Amendment to Article 118 of the Regulation**

The first paragraph of the article 118 of the Assembly's Regulation is amended to say :

“Members of Parliament shall be free from immunity when Assembly decides to waive immunity for all Members of Parliament in cases of investigation for offenses of corruption and abuse of duty or when is removed upon the request of the Prosecutor General on individual Members of Parliament on all types of criminal offenses. Assembly decides on waiver of immunity for the investigation/prosecution in the the beginning of the legislature term. The conditions and the procedure for removal of immunity are specified in the decision. The decision becomes integral part of the regulation of the Assembly, known as its Annex. In terms of the removal of the immunity for individual members of Parliament, the request and the accompanying documents for issuing the authorization for the initiation of the prosecution are submitted to the Speaker of the Parliament by the Prosecutor General. The Speaker of the Parliament promptly submits for review the request and the accompanying documents to the Regulation, Mandates and Immunity Committee and informs Assembly during the first upcoming plenary session.”

### **Article 7**

#### **Entry into Force**

This decision enters into force immediately.

**SPEAKER OF THE PARLIAMENT**

**JOZEFINA TOPALLI**

## **EXPLANATORY NOTE**

**On**

### **The Draft-decision “On Waiver of Immunity of the MP-s and the Conditions for the Authorization of the Investigation”**

The Committee of Ministers of the Council of Europe in the Resolution (97) 24 “On twenty guiding principles of the fight against corruption” has declared 20 principles elaborated by the Multidisciplinary Group for Corruption that will support the fight against corruption and organized crime. Convinced of the serious threat that the corruption represents for the principles and values of the Council of Europe, the Committee of Ministers of the Council of Europe has adopted these principles with the aim of uniting the efforts of the member states, inviting the state authorities to apply those principles in the national legislation and in practice.

One of the principles (the sixth according to the resolution) is the one of “limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society”.

Given the conditions of Albania, displaying one of the highest levels of corruption at global level, with numerous cases of people vested with power who abuse their duty, we propose a draft- decision “On the waiver of the immunity of the MP-s and the conditions for the authorization of prosecution”. The decision is drafted following the model of the decision of German Bundestag on the removal of the immunity of MP-s. The German model adopts the removal of immunity for the prosecution of all criminal offenses, except for the insulations of politician character.

Our draft- decision aims at the waiver of immunity of the MP-s only for criminal offenses related to corruption and abuse of duty. The waiver of the immunity shall be valid for the entire duration of the mandate, in accordance with the contents of the decision. The initiation of the prosecution may be done after 48 hours following the written notice that the Prosecutor General submits to the Speaker of the Parliament. The Chairman, within 48 hours from the receipt of notice makes aware and sends the materials related to the case to the Commission for the Regulation, Mandates and Immunity and to the MP against which the criminal prosecution is initiated. Waiver of immunity shall not be extended over, the search of the residence or of the person; the watching of the person; the arrest measure; the delivery of the criminal proceeding for trial.

When the needs of prosecution and investigation are not covered by the waiver of the immunity, upon the request of the Prosecutor General and individually for each MP, the Assembly may decide to remove the immunity.

The removal of the immunity lasts as case may be:

1. until the termination of the investigation;
2. until its replacement with the authorization for the removal of the immunity for the arrest of the MP;
3. until the taking of the final judicial decision of acquittal or of the cease of the case
4. until the termination of the MP’s mandate.

This decision extends its effects for the entire duration of the legislature and shall become an integral part of the Assembly's Regulation, as its annex labeled "annex 1".

Convinced that the fight against corruption is a multidisciplinary fight and requires public, political and legal support, we think that the above decision is a necessary step in the appropriate orientation.

**A Group of Members of Parliament**