

## QUESTIONNAIRE ON PARLIAMENTARY IMMUNITY

prepared by  
**Mr G.W. MAAS-GEESTERANUS**

### Preliminary observation

A large number of European countries recognises two kinds of protection of members of Parliament. Although different terms and descriptions are in use in the respective legislations, and the extent of the protection differs from country to country, the two types may be broadly defined as follows :

- a. "freedom of speech", i.e. immunity from legal process in respect of words spoken or written and of votes cast in the performance of the function;
- b. "freedom from arrest", i.e. immunity from personal arrest or detention in respect of other acts, as long as the person concerned is a member of Parliament.

### Note

With respect to Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom, the following observation is made. The state of the "parliamentary immunity" in these countries, as at the end of 1992, has already been dealt with in a study entitled : "Parliamentary Immunity in the member States of the European Community and the European Parliament". Therefore, questions 1-6 inclusive and 8 should be answered for these countries only insofar as the situation has changed since 1992.

### Questions

1. Do the members of the national parliament of your country enjoy a protection of the kind referred to above under A? and that under B?
2. If so, is such protection based on provisions embodied in the constitution? / in legislation? / otherwise?  
Please attach the text of the provisions referred to.
3. In your country, may the protection of a member of Parliament be lifted?
4. If so, by whom? and who is competent to submit a proposal for that purpose?
5. What conditions, if any, are attached to a decision to lift the protection?
6. If one or both of the questions under 1 have been answered in the negative, please indicate whether and until when such protection previously existed in your country?
7. The question whether and to what extent "parliamentary immunity" still is, nowadays, the appropriate means to protect the proper functioning of a national parliament, comes up for discussion time and again.  
Has this question, in your country, currently or in recent times, formed a subject of (political or doctrinal) debate?
8. If possible, please give the names of one or two authoritative authors in the field of parliamentary immunity in your country, and the title(s) of the relative book(s).
9. Are you, with regard to your own country, of the opinion that the legal status of members of the national parliament deserves reconsideration?

### Commentary

The proposal to devote a study to the institution of parliamentary immunity emanates from the representative of the Parliamentary Assembly of the Council of Europe, who submitted the topic orally to the Venice Commission in 1994.

This questionnaire is of preliminary nature. It was suggested (see the previous paper on this topic CDL (95) 4 of 17 January 1995) that the Commission take up the study in two stages :

- a. consideration of the extent of a possible study; definition of object and purpose of the study;
- b. preparation of detailed reports on different aspects of parliamentary immunity. (A number of suggestions are given in the paper referred to above.)

It was proposed that stage a. would be carried out by means of a short questionnaire, to be issued to the members of the Commission. The present questionnaire is designed to serve that purpose.

It is proposed that consultation of the Interparliamentary Union most fruitfully should be left until the Commission has received the answers to this questionnaire. On the basis of such answers, supplemented by any comments the Interparliamentary Union might wish to make, the Commission will be in a position to decide on stage b. Should the Commission decide to conduct a thorough study of the matter, it will no doubt invite its members to take counsel with "their" national parliaments.

In the Note at the beginning of this paper, reference was made to the study on parliamentary immunity published 1993 by the European Parliament's Directorate General for Research, a study which was made available to members of the Commission at the 19th meeting. That study primarily aimed at an examination of the legal status of the members of the European Parliament. The study now to be taken up by the Commission (if the Commission decides to do so) should be limited to national parliaments, excluding for the time being parliamentary assemblies of international organisations. It could rather be imagined that the Commission would make it a point :

- to provide informatory material for the benefit of countries where (new) legislative measures in respect of parliamentary immunity are under consideration;

- to reveal whether, in some countries, unacceptable arrears exist in respect of the protection of members of Parliament;
- to examine comparative aspects in the different national legislations, or
- to discover whether, in this field, norms exist of general validity in Europe.

Godert W. Maas Geesteranus