

[emphasis added]

24. ... The rise of party politics also means that, at least in parliamentary systems, there will be a strong link between the government and the members of the governing party in parliament. This means that it is usually not parliament itself, but rather the parliamentary opposition (most often in minority) that might be in danger of undue pressure from the executive, and which might therefore be in need of special protection. Thus rules on parliamentary immunity today function primarily as a minority guarantee.

29. In recent debates on parliamentary immunity a distinction is sometimes drawn between old and new democracies. The argument is that such immunity is less necessary in democratic systems that have reached a certain level of maturity and stability, where the political functions of members of parliament are adequately protected in other ways, and where there is little or no reason to fear undue pressure against members of parliament from the executive and the courts. In contrast, it is argued that rules on parliamentary immunity are still necessary in new and emerging democracies, that are not yet wholly free from their authoritarian past, and where there is real reason to fear that the government will seek to bring false charges against political opponents and that the courts may be subject to political pressure. At the same time, it is often new democracies that are most exposed to political corruption and the misuse of immunity by extremist parliamentarians to threaten democracy itself. Thus the paradox of parliamentary immunity – that it can serve both to foster and to undermine democratic development.

45. On the European level both the European Parliament and **the Parliamentary Assembly of the Council of Europe were designed with relatively wide rules on parliamentary immunity**, both as regards non-liability and inviolability. **Both institutions have later on put considerable effort into developing more detailed rules and guidelines on how this should be regulated and applied.**

48. It is the view of the Venice Commission that **the rules and practices developed by the European Parliament and the Parliamentary Assembly should today be seen to reflect a certain degree of common European consensus on the subject of parliamentary immunity in general and lifting of immunity in particular, which should serve as inspiration also at the national level.**

154. At the same time, the Venice Commission recognises that not all democratic systems always function like this, and that there might still in some countries be a pressing need of the protection offered by rules on parliamentary inviolability against misuse of the legal system. In some countries that are still in transition towards real democracy, or where democracy is still relatively new and fragile, there are experiences with cases in which the police or prosecutorial powers have been used to discredit, punish or destroy political opponents, including members of parliament. Nor is it always the case that in every state the judicial power can be trusted to act independently and not be unduly influenced by the executive. Members of parliament, and especially of the opposition, may, in some countries, be vulnerable to political harassment in the form of unfounded legal allegations, in a way that ordinary citizens are not.

162. The Venice Commission in general considers that there should be a basic presumption that inviolability should be lifted in all cases in which there is no reason to suspect that the charges against the member concerned has been politically motivated. Inviolability should only apply in cases where there is reason to suspect a partisan-political element in the decision to prosecute the parliamentarian concerned.

189. Criteria for lifting inviolability:

- when the request for lifting is based on sincere, serious and fair grounds;

...

- **when the request concerns a criminal conduct which is not strictly related to the performance of parliamentary functions but concerns acts committed in relation to other personal or professional functions;**
- when proceedings should be allowed in order not to obstruct justice;
- when proceedings should be allowed in order to safeguard the authority and legitimacy of parliament.