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UPDATED REPORT

ON

**THE RELATIONSHIP BETWEEN POLITICAL AND CRIMINAL
MINISTERIAL RESPONSIBILITY**

**LEGAL FRAMEWORKS AND PROCEDURES FOR CRIMINAL
PROSECUTION OF MEMBERS OF GOVERNMENT IN VENICE
COMMISSION MEMBER STATES**

**Adopted by the Venice Commission
at its 148th Plenary Session
(Venice, 9-10 October 2026)**

**on the basis of comments by
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I. Introduction

1. By letter of 14 January 2026, the then President of the Parliamentary Assembly requested the Venice Commission of the Council of Europe to prepare a report on best practices as regards the issue of and procedure for criminal prosecution of members of government in Council of Europe member states.

2. The present report was prepared on the basis of comments by Ms Bazy-Malaurie, Ms Biglino Campos and Mr Ojanen. The draft report was examined at the joint meeting of the Sub-Commissions on Fundamental Rights and on the Protection of National Minorities on 8 October 2026 and adopted by the Venice Commission at its 148th Plenary Session (Venice, 9-10 October 2026).

II. Background and scope of the report

3. The matter of good practices and procedures for criminal prosecution of members of Government is closely linked with the wider issue of *the relationship between political and legal responsibility*, and the Venice Commission will approach the request from this perspective.

4. In 2013, the Commission adopted a Report on "[the relationship between political and criminal ministerial responsibility](#)"¹, following the request by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly (PACE) within the framework of the preparation of the report on "Keeping political and criminal responsibility separate". The purpose of the report was "the elaboration of objective criteria for distinguishing cases in which elected officials should only be held politically responsible for their actions from those cases in which criminal responsibility would be in order".

5. PACE Resolution 2381 (2021)² addressed the risk of criminal proceedings being used in relation to political speech, stressing the chilling effect that disproportionate or politically motivated prosecutions may have on democratic debate. Resolution 2188 (2017),³ while broader in scope, identified systemic threats to the rule of law, including the misuse of criminal justice mechanisms against political actors and weaknesses in judicial independence that may distort the fairness and credibility of prosecutions involving senior officials.

6. Since 2013, important developments have taken place in the legal and institutional landscape of Council of Europe member States, as well as in the practice of relevant European and international bodies. These include, in particular, the evolving case-law of the European Court of Human Rights (hereinafter, the Court or ECtHR), the monitoring and standard-setting activities of the Group of States against Corruption (GRECO) as well as the rule of law assessment frameworks developed by the European Commission.

7. The Commission recalls that its 2013 report focused on the elaboration of criteria for distinguishing between political and criminal responsibility of members of government. While this distinction remains fully valid, developments observed in recent years suggest that the issue increasingly arises in terms of ensuring effective criminal accountability while preventing the politicisation of criminal proceedings. This shift impacts the framework governing the prosecution of members of government. The present report therefore builds on the 2013

¹ Venice Commission, [CDL-AD\(2013\)001](#)

² [Resolution 2381 \(2021\)](#) "Should politicians be prosecuted for statements made in the exercise of their mandate?".

³ [Resolution 2188 \(2017\)](#) "New threats to the rule of law in Council of Europe member States". See also [Resolution 1950 \(2013\)](#), "Keeping political and criminal responsibility separate."

analysis, while placing greater emphasis on the legal frameworks and procedures for prosecution of members of government.

8. Three categories of elected officials may, in principle, incur both political and legal responsibility: (i) Heads of State, (ii) government ministers (including Prime Ministers and all members of government), and (iii) members of parliament (MPs). In most constitutional systems, the applicable rules and procedures differ for each category. Heads of State and MPs often enjoy, for different reasons, a higher degree of immunity from legal responsibility than government ministers. In practice, controversies concerning the relationship between political and legal responsibility have most frequently arisen in respect of ministers. In order to answer the question asked by the Parliamentary Assembly, the present report will deal with criminal responsibility with a particular focus on issues concerning criminal prosecution of members of Government.

9. As already noted in the 2013 report, the relationship between legal and political ministerial responsibility is a fundamental, complex and often sensitive issue in constitutional law. There remains considerable diversity among member States of the Council of Europe as to how this relationship is regulated. No single model prevails, and no uniform European standards in hard law have emerged, apart from those that may be derived from the European Convention on Human Rights (the Convention). A fully comprehensive comparative analysis would require not only an examination of legal rules and procedures, but also of their interpretation and application in practice. Given the constraints of the present report, it has not been possible to carry out a thorough comparative study, and only some selected pertinent examples⁴ will be cited.

10. The report takes into account the information submitted by national correspondents, as well as research conducted by the Secretariat of the Venice Commission. These sources provide an overview of key features of national systems, although they do not offer a fully exhaustive picture. Though these documents give an overview of important features there is still relevant information that is not covered, and they should not be seen as comprehensive. Furthermore, the relationship between political and criminal ministerial responsibility can only be analysed from the internal perspective of the various legal systems, since political liability operates solely within these spheres. For this reason, following the pattern of the Report adopted by the Commission in 2013, this new Report does not address the immunity recognised under international law for heads of state, heads of government and ministers of foreign affairs, nor the exceptions to that immunity set out in Article 27 of the Rome Statute of the International Criminal Court. According to this article, heads of state or government and members of a government are not exempt from criminal responsibility under the statute.

11. Most of the report is about describing, analysing and assessing rules on the scope of criminal prosecution of Ministers, and to which extent their criminal responsibility can be assessed in view of the application of immunity rules. The report first clarifies the concept of criminal prosecution of members of Government and its relationship with “political” and “legal” responsibility and examines the concept of immunity as a legal shield being designed to protect the executive from judicial or political pressure while in office, to ensure that ministers be effectively able to fulfil their functions (III). It then provides a comparative overview of the legal frameworks and procedures governing the initiation and conduct of criminal proceedings in Member States of the Venice Commission’ constitutional systems and the procedural immunities that might prevent or limit prosecution and their application in practice (IV), followed by an assessment of the main challenges and concerns (V), in particular the extent to which the initiation and conduct of criminal proceedings may be influenced by political considerations.

⁴ Examples are only presented for comparative purposes, their mention does not mean that the Venice Commission tacitly and by implication endorses them as representing best practices or being compatible with the rule of law and human rights.

Drawing up common European criteria and guidelines is a more challenging task, since there is great variety in national rules and traditions. Towards the end of the report (VI) there are however proposals for such standards and guidelines.

III. Political and legal responsibility and criminal prosecution of members of government

12. As in its 2013 report, the Venice Commission will use the term “political” ministerial responsibility in the wide sense, covering all ways in which a government minister may be “held accountable” for political actions, ranging from mere criticism in parliament or in the media, to failure at elections, to the results of more formalised procedures of parliamentary scrutiny and oversight, including question time, committee hearings, special committees of inquiry etcetera. In parliamentary systems the ultimate form of political responsibility for ministers is the vote of no-confidence, which obliges the minister (and sometimes the whole cabinet) to resign. Ministers may be held politically responsible not only by the opposition, but also by the media, by the general public, or indeed by their own prime minister.⁵

13. “Legal” ministerial responsibility is a more limited concept, covering only cases when a minister breaks the law, where there are potential legal consequences resulting in criminal or other forms of legal sanctions, such as civil ones. “Criminal” responsibility of ministers is a sub-category of legal responsibility.

14. Criminal prosecution of members of government operates within a distinct constitutional and procedural framework of immunity, aimed at ensuring both effective accountability and protection against misuse of criminal law, so that ministers can perform their official functions without fear of personal prosecution, ensuring governmental stability and effective governance. Immunity is therefore meant to serve the public interest, but at the same time needs to be limited so as not to obstruct justice or accountability. Its removal or limitation is key to ensuring that ministers are not above the law.

15. Like for members of parliament, there are two main forms of ministerial immunity. Indeed “immunity” in the broad sense covers both the question of whether or not members of government can be held liable for an offence, and the question of under what legal and institutional conditions criminal proceedings may be legitimately initiated and pursued, in line with the requirements of the rule of law, as reflected in the Venice Commission Updated Rule of Law Checklist⁶ and the case-law of the European Court of Human Rights. The first category is usually referred to as “non-liability” and excludes legal responsibility. Ministerial non-liability is often functional and covers opinions given in the official capacity as minister, effectively granting a wider freedom of speech than for ordinary citizens. Non-liability is non-waivable and continues after the end of the mandate as minister. The second category concerns rules on “*inviolability*”, or immunity *stricto sensu*, meaning special protection for members of government accused of breaking the law, typically against arrest, detention, prosecution etcetera. Inviolability is designed to preserve the integrity and operation of the government. Inviolability is usually more narrowly construed than non-liability, with more exemptions; it can be lifted to allow prosecution of ministers and ends with the mandate. Amongst the states that have such rules there is also great differences in how these are applied in practice, and in some countries, they are considered outdated and not invoked.

⁵ Venice Commission, [CDL-AD\(2024\)016](#), Report on the relations between Parliament and the Government: confidence and responsibility, § 51.

⁶ Venice Commission, [CDL-AD \(2025\)002](#), The Updated Rule of Law Checklist.

16. There has been increased debate in many countries and *inter alia* in the work of GRECO, on the role and function of rules on immunity in general and on “inviolability” in particular – in some cases leading to reforms, which most often has served to limit the scope of immunity or to make it easier to lift.

IV. Legal frameworks and procedures for the criminal prosecution of members of Government.

17. As specified below, in a number of countries the prosecution of members of government follows the same general rules of criminal procedure for the prosecution of any ordinary criminal offence for every ordinary citizen. Some other countries differentiate between acts committed by ministers in their private or their official capacity, envisaging a special framework for making government ministers criminally responsible, depending on the nature of the offence or the circumstances in which the offence was committed. This can be a specific high court (a Constitutional Court or a Court with a modified composition), or an *ad hoc* court. Moreover, the practical application of the procedural framework might change depending on whether the member of government is simultaneously a member of Parliament. Additional considerations of non-liability (considered as immunity against any judicial proceedings for opinions or remarks related to the exercise of office) or of inviolability (considered as immunity *stricto sensu* meaning special protection for members of government from legal consequences following from breaches of the law against, typically against arrest, detention, prosecution and sanctions) may also come into play.

18. Members of government are often members of parliament, too. In **Ireland** members of government must be members of the *Houses of the Oireachtas*, in **Canada** they usually belong to the House of Commons or, less frequently, the Senate. In other countries, they can have both capacities, as for example in **Latvia**, where members of government don't have the benefit of immunity and can in principle be held criminally responsible under ordinary criminal law and subject to ordinary criminal procedure, unless they are also members of the *Saeima*, as it's also the case in the **Czech Republic**,⁷ in **Poland**, in **Denmark**⁸ or in **Austria**,⁹ where ministers can be members of parliament at the same time, in which case they retain parliamentary immunity.

A. Ordinary criminal procedures

19. In a number of States, members of Government are subject exclusively to ordinary criminal procedures. In such systems, criminal investigations and prosecutions fall within the competence of ordinary prosecutorial authorities, and cases are adjudicated by the ordinary courts without any special procedural regime.

20. This model reflects a strong commitment to the principle of equality before the law and reduces the risk of impunity, which could exist in systems where special procedures are used. It reflects a strict separation between political office and criminal justice and is increasingly prevalent in systems with strong guarantees of prosecutorial independence.

⁷ In such a case, the constitutional rules on parliamentary immunity apply. Under Article 27 of the Constitution of the Czech Republic, a Member of Parliament or a Senator may be criminally prosecuted only with the consent of the respective chamber of Parliament of which they are a member.

⁸ Ministers enjoy no immunities, except for those ministers who are simultaneous members of the *Folketing*, in which case section 57 of the Constitution applies providing “no member of the Folketing shall be prosecuted or imprisoned in any manner whatsoever without the consent of the *Folketing*, unless s/he is taken in flagrante delicto.

⁹ But ministers may also decide to suspend their mandate in parliament during their time of office as minister.

21. Examples of this model are **Armenia**,¹⁰ **Austria**,¹¹ **Canada**,¹² **Cyprus**,¹³ **Czech Republic**,¹⁴ **Ireland**,¹⁵ **Latvia**,¹⁶ **Liechtenstein**,¹⁷ **Luxembourg**,¹⁸ **Moldova**,¹⁹ **Monaco**,²⁰

¹⁰ No specific provisions regulate the criminal liability of members of the Government (Prime Minister, Deputy Prime Ministers, Ministers). While the Constitution explicitly protects the President, it does not establish any comparable immunity regime for members of the Government. Criminal liability in Armenia is governed by the Criminal Code and Criminal Procedure Code adopted in 2021 and enacted in 2022. Government members are subject to ordinary criminal jurisdiction, like other public officials. Also, no specific procedural safeguards or restrictions operate in the cases involving the arrest or detention of a member of the Government.

¹¹ In Austria, there is no general immunity from criminal prosecution for official acts performed by members of the government. Members of the government are fully liable for criminal offences under the Criminal Code. Nevertheless, a special procedure for impeachment is possible.

¹² There is no immunity from prosecution for criminal offences in Canada for ministers, insofar as they are necessarily members of Parliament. "A Member of Parliament who is suspected of, charged with or convicted of a criminal offence is in exactly the same position as any other citizen, unless the offence in question is related to the proceedings of Parliament" (see Maingot, *Parliamentary Privilege in Canada*, 2nd ed., p. 162).

¹³ Unlike the President of the Republic, Ministers do not enjoy any special constitutional immunity from criminal prosecution. Articles 46 to 54 of the Constitution of the Republic of Cyprus do not establish any restriction on, or special procedure for, the criminal prosecution of ministers. Moreover, the Constitution does not establish a special category of "ministerial offences" or a distinct jurisdiction for acts performed in the exercise of ministerial functions. Ministers are therefore subject to the ordinary criminal justice system. Criminal proceedings against ministers do not require parliamentary authorization, are not subject to a special jurisdiction or special court and are conducted before the ordinary criminal courts.

¹⁴ In the Czech Republic, the criminal liability of members of the government is not governed by a special regime that would grant them immunity from prosecution as a consequence of holding office. Members of the government, including the Prime Minister and ministers, are criminally liable under the ordinary provisions of criminal law, in particular the Criminal Code (Act No. 40/2009 Coll.). When ministers commit a criminal offence, they may therefore be prosecuted and tried by the ordinary authorities involved in criminal proceedings, in the same way as any other individual. The Prime Minister and ministers may, however, benefit from parliamentary immunity, provided that they are Members of the Parliament, which is not infrequent. Insofar as Members of Parliament or Senators are concerned, according to Article 27 of the Constitution of the Czech Republic, they may be criminally prosecuted only with the consent of the respective chamber of Parliament of which they are a member. If the chamber refuses to grant consent, criminal prosecution is not possible for the duration of the parliamentary mandate, although it may be initiated after the mandate has ended.

¹⁵ In this comparative overview the criminal responsibility of members of government is considered independently of whether the minister in question concurrently holds a seat in Parliament. Ireland, however, presents a distinct situation in this regard. Under Article 28(7) of the Irish Constitution, members of government must be members of Parliament (Houses of the Oireachtas). As a consequence, while the applicable legal framework contains no special legislative provisions governing the criminal responsibility of ministers in their capacity as ministers, they are, by virtue of their constitutionally mandated parliamentary status, subject to two specific provisions bearing on their criminal responsibility as members of Parliament (Article 15(13) of the Constitution of Ireland). The first is a restricted privilege from arrest, limited in scope to ensuring access to and attendance within the precincts of the *Houses of the Oireachtas*. The second corresponds to non-liability for words or other utterances used by a member in the Houses.

¹⁶ As far as members of the *Saeima* (Parliament) are concerned, they enjoy immunity insofar as "non-liability" is concerned: they may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. Members of government are subject to ordinary criminal procedure. They can in principle be held criminally responsible under ordinary criminal law. The Constitution does not grant ministers a general criminal immunity simply because they hold office. However, ministers who are also *Saeima* members receive the constitutional protections (inviolability) applicable to all *Saeima* members and, following to Article 30 of the Constitution, criminal prosecution of a *Saeima* member cannot be commenced without the consent of the *Saeima* (s.he cannot be arrested, searched, or have personal liberty restricted without *Saeima* consent, subject to the constitutional exception for being caught committing a crime).

¹⁷ In Liechtenstein, members of the government are subject to the same criminal liability as other state bodies. This applies in particular to offences of corruption and abuse of office. These provisions are enshrined in Section 22 of the criminal law (*Strafgesetzbuch*) in §§ 302 to 313. They do not differ between members of government and other officials. Nevertheless, a special procedure for impeachment is possible (see below).

¹⁸ In Luxembourg, members of Government are criminally responsible for acts committed in the exercise of their functions, and this responsibility continues to apply after the end of their mandate. Only the public prosecutor may initiate and conduct criminal proceedings in respect of such acts. The criminal responsibility of members of the Government is determined by the ordinary courts (*juridictions de droit commun*) in accordance with the ordinary rules of criminal procedure. Parliamentary involvement is limited to the authorization of the arrest of a member of the Government under Article 94(4) of the Constitution.

¹⁹ The Constitution of the Republic of Moldova does not provide for criminal immunity for members of the Government, nor does it establish a special constitutional procedure for authorising criminal prosecution against

Morocco,²¹ **Poland**²² (however, where ministers are also members of the Sejm or the Senate the consent of the respective Chamber is required for prosecution), **Slovakia**,²³ **Slovenia**²⁴ and the **United Kingdom**.²⁵

B. Ordinary/Special criminal procedures depending on private/official capacity of the minister having committed the acts.

22. As previously mentioned, some other countries differentiate between acts committed in a private capacity and acts committed in the official capacity of the minister. As with the systems examined above, in the former case the member of government is subject to ordinary criminal procedure. In the latter case, special procedures can be envisaged (see below). Countries that provide for such a distinction, thereby subjecting members of government to ordinary criminal procedure for offences committed in their private capacity include **Algeria**,²⁶

them. They are subject to the principle of equality before the law and may be held criminally liable under the general provisions of the Criminal Code and the Criminal Procedure Code. The relevant legal framework is complemented by the legislation governing the status of persons holding public dignity positions and by legislation in the field of integrity.

²⁰ In Monaco, neither the Minister of State (who performs the role of Prime Minister) nor the minister-counsellors (members of the Government, politically accountable to the Prince) enjoy any form of criminal immunity or exemption from prosecution. They may accordingly be subject to criminal proceedings under the ordinary rules of law for offences committed both in the exercise of their functions or outside of their official capacity. Monaco has no special or dedicated jurisdiction for the trial of ministers; they are tried before the ordinary courts.

²¹ Under Article 94 of the 2011 Constitution of Morocco, members of the government bear criminal responsibility before the courts of the Kingdom for criminal offences committed in the exercise of their functions. However, the implementing legislation intended to regulate the procedure governing the criminal responsibility of ministers has not yet been enacted.

²² Pursuant to Article 156(1) of the Constitution of the Republic of Poland, members of the government may be held accountable before the Tribunal of State for criminal offences committed in connection with the exercise of their office. However, pursuant to Article 2(5) of the Act on the Tribunal of State, they may be held criminally liable before the Tribunal of State only if the *Sejm*, in its resolution to hold those persons constitutionally accountable before the Tribunal of State, has considered it appropriate to pursue constitutional and criminal liability jointly. Otherwise, members of the government are criminally liable for such offences before the ordinary criminal courts. As a rule, they do not enjoy criminal immunity by virtue of holding ministerial office. An exception applies where a minister simultaneously holds the mandate of a member of the *Sejm* or the Senate. In such cases, the minister benefits from parliamentary immunity under Articles 105 of the Constitution. Consequently, the prior consent of the relevant chamber of Parliament is required before criminal proceedings may be instituted against that person. For criminal offences falling outside the scope of Article 156(1) of the Constitution of the Republic of Poland, that is, offences not committed in connection with the exercise of their office, members of the government may be prosecuted and tried before the ordinary criminal courts in the same manner as any other individual.

²³ There is no special regime of criminal liability of ministers (members of Government) in Slovakia. Any criminal charges brought against them are handled by regular criminal courts, according to the usual rules of jurisdiction set forth in the Criminal Procedure Code. Unlike members of Parliament, they enjoy no immunity.

²⁴ Members of the Government are, as a rule, subject to the ordinary criminal justice system, and ministers may be investigated and prosecuted in accordance with the ordinary rules of criminal procedure, like any other person. However, the National Assembly may additionally initiate a special constitutional impeachment procedure before the Constitutional Court in respect of violations of the Constitution or the law committed in the exercise of ministerial office (Article 119 of the Constitution). The Constitutional Court Act (*Zakon o Ustavnem sodišču*) provides, in Article 65(3), that, if criminal proceedings are initiated against the President of the Republic, the Constitutional Court may postpone its decision until those proceedings have been concluded. Pursuant to Article 66 of the Act, these provisions apply *mutatis mutandis* to impeachment proceedings against the Prime Minister and ministers. Article 67 further provides that, in matters not regulated by the Act, the Constitutional Court shall apply the principles of criminal procedure. These provisions presuppose that ordinary criminal proceedings and impeachment proceedings are separate procedures capable of running in parallel.

²⁵ For the purposes of the common law offence of misconduct in public office, ministers are public officers. A public officer commits the common law offence of misconduct in a public office if, acting as such, they wilfully neglect to perform their duty and/or wilfully misconduct themselves, to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification. Misconduct in public office is a common law offence: it is not defined in any statute.

²⁶ In Algeria, the Code of Criminal Procedure (*Loi n° 25-14 du 9 Safar 1447 correspondant au 3 août 2025*) differentiates offences committed in private from those committed in the performance of, or in connection with official duties (Article 736 of the Code of Criminal Procedure).

Finland,²⁷ France,²⁸ Greece,²⁹ Korea,³⁰ Iceland,³¹ Italy,³² Netherlands,³³ North Macedonia,³⁴ Sweden³⁵ and Switzerland.³⁶

C. Special procedural regimes

1. Non-liability

23. From the information gathered by the Venice Commission, it appears that in a number of its Member States, members of government benefit from a category of immunity usually

²⁷ In Finland, members of the government do not enjoy a general immunity from criminal prosecution. Sections 114 to 116 of the Constitution address exclusively unlawful conduct committed by a member of the government in the exercise of official functions. Accordingly, offences that bear no direct connection with the exercise of such functions are subject to the ordinary provisions of the Criminal Code, and the minister concerned may be prosecuted in the same manner as any other individual.

²⁸ On the distinction between acts falling within the jurisdiction of the Court of Justice of the Republic (CJR) and those subject to the jurisdiction of the ordinary criminal courts, the Court of Cassation has clarified that a member of the government must be prosecuted before the CJR for acts performed “in the exercise of their functions” within the meaning of Article 68-1 of the French Constitution. The Court has interpreted this criterion as encompassing acts “having a direct connection with the conduct of affairs of State and falling within the powers of the minister concerned”, while expressly excluding acts whose commission is merely “concomitant with the exercise of a ministerial activity” (*Criminal Chamber of the Court of Cassation, No. 99-86.307, 16 February 2000*). For any act falling outside this definition, a member of the French government is subject to prosecution before the ordinary criminal court.

²⁹ According to Article 86(1) of the Constitution of Greece, members of the government can be prosecuted by the Parliament only for criminal offences that they committed during the discharge of their duties.

³⁰ When the expression “members of the government” is used to refer to cabinet-level officials, it may, in the Korean constitutional context, be understood as referring to the Prime Minister and members of the State Council. Members of the government are subject to the ordinary criminal law provisions applicable to public officials and are not afforded any special immunity from criminal prosecution by reason of their office. Nonetheless, criminal investigations concerning high-ranking public officials (which may include members of the government) may fall within the jurisdiction of the Corruption Investigation Office for High-ranking Officials, a specialised investigative body with jurisdiction over certain offences, including corruption-related offences committed by senior public officials. Members of the government are also subject to impeachment proceedings under Article 65 of the Constitution of the Republic of Korea. The President is subject to a separate constitutional rule providing immunity from criminal prosecution while in office, except in cases of insurrection or treason (Article 84 of the Constitution), while remaining subject to impeachment proceedings under Article 65 of the Constitution.”

³¹ Under Article 14 of the Constitution of Iceland, the *Althingi* may impeach ministers only on account of their official acts.

³² In Italy, members of the government are subject to the ordinary rules of criminal law in the same manner as any other individual in respect of offences not connected with the exercise of their official functions. Where an offence is connected with the exercise of such functions, a special criminal procedure is engaged under Article 96 of the Constitution (see below). Preliminary investigations are entrusted to a panel of three magistrates (called the Ministers’ Tribunal, *Tribunale dei Ministri*), selected by lot every two years from among those in the competent judicial district with at least five years’ seniority as a magistrate. If the panel considers that the offences were not committed in the exercise of official duties, it refers them to the competent ordinary judge. If the panel does not order the case to be dismissed and deems that the offences have been committed in the exercise of official duties, the documents are sent to one of the Chambers of Parliament (see footnote 64).

³³ In the Netherlands, if members of government commit a common criminal offense (*een gemeen strafbaar feit*), they are tried by a regular judge just like any other individual. However, if a member of the government commits a crime related to their work (*een ambtsmisdrijf*), the Supreme Court must try them (see below).

³⁴ In North Macedonia, Amendment XXIII (2005) removed immunity from members of government, with the sole exception of the Prime Minister.

³⁵ In Sweden, offences committed by a cabinet minister that are not directly connected with the exercise of official functions are subject to the ordinary rules of criminal law, and the minister concerned may accordingly be prosecuted in the same manner as any other individual. There is only limited guidance on the meaning of “offences directly related to the exercise of duties”. The term “criminal act”, used to designate offences committed in the exercise of official functions and thus triggering the application of the special regime, covers offences such as rebellion, crimes against civil liberties, high treason, incitement to war, perjury in negotiations with a foreign power and abuse of office. Additional offences referenced in this context include incitement to unlawful deprivation of liberty, perjury and genocide.

³⁶ In Switzerland, in respect of offences bearing no direct connection with their official activities or position, members of the government (Federal Council) are subject to ordinary criminal law in the same manner as any other individual; the previously existing provisions on “relative immunity” were repealed in 2011.

referred to as “non-liability” against judicial proceedings for the exercise of freedom of speech in the exercise of their functions, so that ministers can perform their official functions without fear of personal prosecution, ensuring governmental stability and effective governance. Countries granting absolute non-liability to members of government for opinions expressed and votes cast include **Andorra**,³⁷ **Belgium** (only for opinions and votes cast in the performance of ministerial duties),³⁸ **Canada** (insofar as members of government in the exercise of their “*parliamentary* functions” are concerned),³⁹ **Kosovo**,⁴⁰ **Luxembourg**,⁴¹ **Montenegro**,⁴² **North Macedonia** (only with regard to the Prime Minister),⁴³ **Serbia**,⁴⁴ and **Switzerland**.⁴⁵

2. Immunity *stricto sensu* or inviolability

24. In many European countries, members of Government have at least some kind of special legal protection in some kind of criminal cases, typically against arrest, detention and prosecution.⁴⁶ The concept of immunity *stricto sensu* or “inviolability”, covers rules that protect members of Government (or of Parliaments) from legal consequences following from breaches of the law. These countries maintain special procedural regime, usually referred to as “impeachment” proceedings, in which ministers may be held criminally responsible under procedures that are different from ordinary criminal procedures with regard to the initiation of cases, the investigation, the decision to initiate proceedings, the rules on prosecution, the composition of the court (often referred to as “court of impeachment”) and other procedural rules, constituting a jurisdictional privilege. Some countries provide limitations on the arrest or detention of members of government, often requiring authorisation by Parliament, but also allowing for exceptions to the authorisation requirement whenever certain offences are committed and discovered *in flagrante delicto*. Countries that foresee limitations on the arrest

³⁷ Under Article 74 of the Constitution of the Principality of Andorra, the *Cap de Govern* and the Ministers are subject to the same jurisdictional status as the *Consellers Generals*. According to Article 53(2), the *Consellers* may not be called to account for votes cast or any utterances made in the exercise of their functions.

³⁸ Article 101(2) and 124 of the Constitution of Belgium.

³⁹ Section 4 of the Parliament of Canada Act, section 18 of the Constitution Act 1867 and section 9 of the UK Bill of Rights 1689 provide for immunity from prosecution for words spoken or acts performed in the exercise of their parliamentary functions (see also [Chagnon v Syndicat de la fonction publique et parapublique du Québec](#) [2018] 2 SCR 687 at §§ 30-31).

⁴⁰ Members of Government are non-lieable in judicial proceedings of any nature over the opinions expressed, votes cast or decisions taken within the scope of their responsibility. This type of immunity is of unlimited duration (Judgment of the Constitutional Court of 20 September 2011, pp.23-24 (https://api.webgjk-ks.org/Custom/KO98-11_ANG_AKTGJYKIM.pdf)).

⁴¹ Article 94(2) of the Constitution of Luxembourg: “Members of the Government are neither civilly nor criminally liable for the opinions they express in the exercise of their functions”.

⁴² In Montenegro, members of the government enjoy the same type of immunity as members of Parliament (Article 86(4) of the Constitution). Parliamentary immunity entails that a member of Parliament may not be held criminally or otherwise liable for any opinion expressed or vote cast in the exercise of his/her parliamentary function (Article 86(2) of the Constitution).

⁴³ Since the adoption of Amendment XXIII in 2005, only the Prime Minister enjoys immunity. This immunity is not specifically regulated. Therefore, the content of the immunity is the one guaranteed to the Members of Parliament in Article 64 of the Constitution of North Macedonia. Under Article 64(2) of the Constitution, a representative cannot be held to have committed a criminal offence or be detained owing to views he/she has expressed or to the way he or she has voted in the Assembly.

⁴⁴ Article 134(1) of the Constitution of Serbia.

⁴⁵ Article 162(1) of the Swiss Constitution. This absolute immunity applies only to statements made before the two Houses of Parliament or parliamentary bodies, such as parliamentary committees.

⁴⁶ Article 98 of the Constitution of Kosovo - Members of the Government shall be immune from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of their responsibilities as members of the Government.

or detention of members of government include **Andorra**,⁴⁷ **Italy**,⁴⁸ **Lithuania**,⁴⁹ **Luxembourg**,⁵⁰ **Montenegro**,⁵¹ **North Macedonia** (Prime Minister only),⁵² **Portugal**,⁵³ and **Serbia**.⁵⁴

25. In this respect, a distinction is often made, as indicated above, between acts committed in an official capacity and those committed in a private capacity. Special procedures involving Parliament or constitutionally designated bodies remain primarily reserved for offences committed in the exercise of ministerial functions, whereas breaches of ordinary criminal law committed in the ministers' private capacity are dealt with in regular criminal proceedings. This distinction—known in French law as that between “*actes rattachables*” (*public acts committed in official capacity*)⁵⁵ and “*actes détachables*” (*acts unconnected with the exercise of ministerial functions*)⁵⁶—continues to structure the allocation of jurisdiction in many European and non-European Systems.

26. In a number of States, while criminal prosecutions fall within the competence of the ordinary prosecutorial authorities and cases are adjudicated by the ordinary courts, the

⁴⁷ As already mentioned, under Article 74 of the Constitution of the Principality of Andorra, the *Cap de Govern* and the Ministers are subject to the same jurisdictional status as the *Consellers Generals*. According to Article 53(3), throughout their term the *Consellers* may not be arrested or detained, except in the cases of *flagrant delicto* and for that case, their detention and prosecution shall be decided by the plenary session of the *Tribunal de Corts*, while the trial shall be held by the Tribunal Superior.

⁴⁸ Under Article 10 of Constitutional Law 1/1989, in proceedings for the offences referred to in Article 96 of the Constitution, i.e., crimes committed in the exercise of the ministerial duties, the President of the Council of Ministers, ministers, as well as other accused persons who are members of the Senate of the Republic or of the Chamber of Deputies may not be subjected to measures restricting personal liberty, to telephone interception, seizure or violation of correspondence, or to personal or domiciliary searches without the authorisation of the competent Chamber pursuant to Article 5 of the same Constitutional Law, unless they are caught in the act of committing an offence for which an arrest warrant or order is mandatory. The competent Chamber is necessarily convened and shall deliberate on the basis of a report by the committee referred to in Article 9 of the Constitutional Law, no later than fifteen days from the request. In respect of the President of the Council of Ministers and Ministers, the provisional application of accessory penalties entailing their suspension from office may not be ordered.

⁴⁹ Under Article 100 of the Constitution of Lithuania, the detention or restriction of liberty of members of the government requires parliamentary approval, or, during periods between Seimas sessions, presidential approval. According to Article 210 of the Statute of the Seimas of Lithuania, if the Prosecutor General submits a motion to detain or otherwise restrict the liberty of a member of the government, the Parliament takes a decision under Article 23 of the Statute. For the procedure under Article 23 of the Statute of the Seimas of Lithuania, see footnote 58.

⁵⁰ Parliament intervention is required for the authorization of the arrest of a member of the Government, except in cases where a person is caught in *flagrant delicto*, as provided for in Article 94(4) of the Constitution.

⁵¹ In Montenegro, members of the government enjoy the same type of immunity as members of Parliament (Article 86(4) of the Constitution). Parliamentary immunity entails that a member of Parliament may not be detained, without the consent of the Parliament, unless the offence is punishable by a maximum sentence exceeding five years' imprisonment where the member of the government is apprehended *in flagrante delicto*.

⁵² Since 2005 the Prime Minister of North Macedonia enjoys the same immunity as Members of Parliament. Under Article 64(3) of the Constitution, a representative cannot be detained without the approval of the Assembly, unless found committing a criminal offence for which a prison sentence of at least five years is prescribed.

⁵³ According to Article 196(1) of the Constitution, in Portugal, no member of the government may be detained, arrested or imprisoned without the authorization of the Assembly of the Republic, save for a wilful crime punishable by imprisonment for a maximum term of more than three years and *in flagrante delicto*.

⁵⁴ Under Article 134(2) of the Constitution of Serbia, members of the government enjoy the same immunity as members of Parliament. According to Article 103(3) of the Constitution of Serbia, members of Parliament may not be detained without previous approval by the National Assembly. Moreover, paragraph 4 of the same Article provides that members of Parliament found in the act of committing any criminal offence for which the prison sentence longer than five years is not envisaged, may be detained without previous approval by the National Assembly.

⁵⁵ In France, the *Cour de cassation*, in a judgment of 27 June 1995, defined “*les actes commis par un ministre dans l'exercice de ses fonctions [comme étant] ceux qui ont un rapport direct avec la conduite des affaires de l'Etat [...], à l'exclusion des comportements concernant la vie privée ou les mandats électifs locaux*” (acts committed by a Minister in the exercise of official functions as those having a direct link with the conduct of State affairs, excluding behaviours concerning private life or local elective mandates).

⁵⁶ That would include for example illegally giving or withholding permissions, taking bribes, corruption in general, and offences related to failure to disclose political contributions, the diversion of public funds to private purposes, but may also include the carrying out of burglary, theft or violence directed at political opponents.

initiation or continuation of criminal proceedings against a member of government is contingent upon authorisation being granted by a designated body. In such systems, the ordinary procedural framework is retained, but its application is subject to an authorisation requirement that must be satisfied. In **Italy**,⁵⁷ **Lithuania**,⁵⁸ **Montenegro**,⁵⁹ **North Macedonia** (with respect to the Prime Minister only),⁶⁰ **Portugal**,⁶¹ and **Switzerland**,⁶² where the authorisation for the prosecution of a member of the government is granted by Parliament, whereas in **Serbia**, the decision whether to waive or uphold the immunity rests with the government.⁶³

a. Initiation of the proceedings

27. In countries with impeachment procedures (i.e. that resort to special procedures for bringing charges), it is often for parliament (with ordinary or qualified majority) to take the

⁵⁷ In Italy, where the Ministers' Tribunal (*Tribunale dei Ministri*, i.e., the panel competent for preliminary investigations), determines that the offence is connected with the exercise of official functions, it must seek the authorisation of Parliament to proceed to trial before the competent ordinary court. Parliamentary authorisation is only required for offences functionally linked to ministerial duties, whereas ordinary courts retain jurisdiction for private acts. Article 4 of Law 219/1989 defines this authorisation as a "procedural prerequisite for prosecution". According to Article 5 of Constitutional Law 1/1989, the authorisation falls to be granted or refused by the Chamber of Parliament to which the member of the government belongs, unless proceedings are brought against several individuals who are members of different Chambers or who are not members of Parliament, in which case the matter is referred to the Senate. Under Article 9 of Constitutional Law 1/1989, authorisation may be refused only where the Chamber determines, by an absolute majority of its members, that the person concerned "acted to protect a constitutionally relevant interest of the State or to pursue an overriding public interest while exercising governmental functions". That determination is final. Where authorisation is granted, the court of the district capital (*capoluogo*) with territorial jurisdiction serves as the court of first instance.

⁵⁸ Under Article 100 of the Constitution of Lithuania, criminal prosecution of members of government requires parliamentary approval, or, during periods between Seimas sessions, presidential approval. According to Article 210 of the Statute of the Seimas of Lithuania, if the Prosecutor General submits a motion to prosecute a member of the government, the Parliament takes a decision under Article 23 of the Statute. Upon receipt of a report from the Prosecutor General, the Seimas decides whether to establish an investigation commission to examine the matter, unless the concerned individual expressly consents to the waiver of immunity. In such cases, the Speaker submits a draft resolution for consent, and the matter is debated and voted on at the next sitting, with the participation of the individual and a limited number of speakers for and against. If an investigation commission is formed, it must hear the individual concerned, or a delegate, as well as a representative of the Prosecutor's Office. The commission may proceed in their absence if they fail to attend without valid reasons set out in the Code of Criminal Procedure. Once the commission has reached its conclusion, the matter is scheduled for the next Seimas sitting. The debate is strictly limited to the facts stated in the Prosecutor General's motion, and participation is restricted to the commission rapporteur, the individual concerned (or their delegate), and a limited number of members of Parliament speaking for and against. Three outcomes are possible. If the investigation commission proposes to authorise prosecution, absolute majority is required for consent. If the investigation commission proposes to deny prosecution, then the proposal needs to be supported by a simple majority. If the commission's proposal to refuse is not accepted, the Seimas immediately votes on granting consent.

⁵⁹ Under Article 86 of the Constitution of Montenegro, members of government enjoy the same immunity from criminal prosecution as members of Parliament. Therefore, criminal proceedings may be initiated only upon parliamentary authorisation. The sole exception concerns offences punishable by a maximum sentence exceeding five years' imprisonment where the member of the government is *apprehended in flagrante delicto*. Upon termination of office, the immunity ceases.

⁶⁰ In North Macedonia, Amendment XXIII (2005) removed immunity from members of government, with the sole exception of the Prime Minister. According to Amendment XXII, the Assembly decides whether to lift the Prime Minister's immunity.

⁶¹ In Portugal, authorisation from the Assembly of the Republic is required in all cases of crime, except in cases of intentional crimes punishable by a maximum sentence exceeding three years imprisonment and committed *in flagrante delicto* (Article 196(2) of the Constitution of Portugal). Except for the prosecution of crimes committed by the Prime Minister in the exercise of official functions (see below), once authorisation has been granted, the criminal prosecution of a member of government follows the ordinary procedural framework.

⁶² In Switzerland, members of government (Federal Council) enjoy relative immunity for offences directly related to their official activities or position (Article 162 (1) of the Swiss Constitution) and prosecution services require authorisation from the relevant Federal Assembly committees to initiate criminal proceedings (Article 17 (1) of the Law on Parliament).

⁶³ Under Article 134(2) of the Constitution of Serbia, members of government enjoy the same immunity as members of Parliament. Once the immunity of a minister has been lifted by the government, the minister concerned may be prosecuted in the same manner as any other private individual or public official.

decision whether to *initiate* proceedings against a government minister. This may also mean that it is for parliamentary organs to do the investigations, through standing committees on parliamentary oversight and scrutiny, special commissions of inquiry or other procedures. However, in some countries where it is for Parliament to decide whether to indict ministers, the subsequent proceedings are conducted by the ordinary prosecutors and criminal courts.

28. Countries in which it is for the Parliament to decide whether or not to *initiate* criminal proceedings against a government minister include **Belgium** (the prosecution of a minister may be initiated exclusively by the Prosecutor General at the competent Court of Appeal. Authorisation of the House of Representatives is required in respect of the pre-trial detention of ministers and also to subsequently refer a minister to the criminal court), **Finland** (exclusively for unlawful conduct committed by a member of the government in the exercise of official functions), **Greece** (only for criminal offences that ministers committed during the discharge of their duties), **Iceland** (only on account of the minister's official acts), **Italy** (only when the offence is connected with the exercise of the minister's official functions),⁶⁴ **Lithuania**,⁶⁵ **Mexico**,⁶⁶ **Montenegro**,⁶⁷ the **Netherlands** (for crimes related to the minister's work – *een ambtsmisdrif*),⁶⁸ **North Macedonia** (with respect to the Prime Minister only), **Norway** (but only in the very limited case of constitutional responsibility of the minister), **Poland**,⁶⁹ **Portugal**,⁷⁰ **Slovenia** (only in the special constitutional impeachment procedure before the Constitutional Court referred to in Article 119 of the Constitution),⁷¹ **Spain**,⁷² **Sweden**,⁷³ **Switzerland**,⁷⁴ and **Turkey**.⁷⁵ Some of these countries have unicameral

⁶⁴ Technically, the preliminary investigation is conducted even before parliamentary approval by the so-called Ministers' Tribunal (*Tribunale dei Ministri*). (See footnote 32 32).

⁶⁵ Required consent of the Seimas or the President of the Republic in the period between the sessions of the Seimas.

⁶⁶ Title Four of the Political Constitution of the United Mexican States (CPEUM) (Articles 108 to 114) regulates the different types of liability of public officials applicable to the three branches of government (Executive, Legislative, and Judicial) at the three levels of Government (federal, state, and municipal). If the offense is of a common order, the Chamber of Deputies acting as a grand jury shall determine, by an absolute majority of votes of its total membership, whether or not there are grounds for proceeding against the accused (Article 109). The Senate, constituted as a grand jury, shall take cognizance of all official offenses; but it may not open the pertinent investigation without a previous bill of impeachment by the Chamber of Deputies (Article 111).

⁶⁷ Parliamentary approval is not required for offences punishable by a maximum sentence exceeding five years' imprisonment where the member of the government is apprehended *in flagrante delicto*.

⁶⁸ Article 119 of the Dutch Constitution provides that proceeding will be instituted by Royal Decree or by a resolution of the House of Representatives. Following Article 7 of the Ministerial Responsibility Act of 1855, if at least five members of the House of Representatives submit a written and reasoned indictment for suspected official misconduct, the House of Representatives decides whether to consider the indictment. A possible amendment (2025) of Article 119 of the Constitution could provide that the Procurator General at the Supreme Court initiate proceedings rather than the government or the House of Representatives, and that the competent court be the respective regional court and the court of appeal rather than the Supreme Court.

⁶⁹ Where the *Sejm* may decide that criminal liability for offences committed in connection with the exercise of ministerial office should be pursued jointly with constitutional liability before the Tribunal of State.

⁷⁰ Except in cases of intentional crimes punishable by a maximum sentence exceeding three years imprisonment and committed *in flagrante delicto* (Article 196(2) of the Constitution of Portugal).

⁷¹ The special procedure under Article 119 of the Constitution does not replace or displace ordinary criminal liability; rather, it exists alongside it as a distinct constitutional mechanism applicable only to a narrowly defined category of official misconduct.

⁷² Only in respect of accusations of treason or offences against the security of the State allegedly committed in the exercise of governmental functions (Article 102(2) of the Constitution).

⁷³ Only for offences directly related to the exercise of duties of the minister and the prosecution is decided by the Committee on the Constitution.

⁷⁴ See footnote 62 62.

⁷⁵ Article 106 of the Constitution (as amended on April 16, 2017; Act No. 6771). Absolute majority of the Grand National Assembly of Türkiye may table a motion requesting that the Deputies of President of the Republic and ministers be investigated on allegations of perpetration of a crime regarding their duties. The Assembly shall debate the motion and may decide to launch an investigation. If an investigation is decided to be conducted, it shall be conducted by a committee of fifteen members, chosen by lot, for each political party in the Assembly. The committee shall submit its report on the conclusion of the investigation to the Office of the Speaker. The report

parliaments. Others have bicameral parliaments, and here the decision may either be given to one of the chambers (usually the lower one) or to both (for example, in Italy, depending on the Chamber to which the minister belongs if he/she is also a member of Parliament – if not, it would be for the Senate to decide).

29. In **Sweden** the competence to make the decision is given to the parliamentary Committee on the Constitution. The Parliamentary ombudsman has the statutory task to bring and carry out prosecutions that the Committee on the Constitution has decided against a Minister of State. In **Finland**, it is for the Constitutional Law Committee of Parliament to give its opinion concerning the (un)lawfulness of the actions of the minister. In **Iceland**, the *Althingi* will elect a parliamentary committee of five members to monitor proceedings and assist the Parliamentary Prosecutor. In **Poland**, the *Sejm* may, upon a motion submitted by the President of the Republic or at least 115 deputies, resolve by a three-fifths majority of the statutory number of deputies to hold a member of the government accountable before the Tribunal of State. If the *Sejm* considers it appropriate to pursue constitutional and criminal liability jointly, the Tribunal of State exercises jurisdiction over both. Otherwise, criminal liability is determined by the ordinary criminal courts. In **Switzerland**, members of government enjoy relative immunity for offences directly related to their official activities or position, and prosecution services require authorisation from the relevant Federal Assembly committees to initiate criminal proceedings. In **Slovenia**, the Mandate and Immunity Commission gives its opinion to the National Assembly.⁷⁶

30. In **France**, complaints and prosecutorial initiatives are first reviewed by a special filtering body, the *commission des requêtes*, composed of judges from the Court of Cassation, the *Conseil d'État*, and the *Cour des comptes*. If the *commission des requêtes* considers the complaint to be admissible, the matter is referred for investigation (*instruction*) to a special commission composed of three judges from the Court of Cassation. In The **Netherlands**, it is for the House of Representatives to decide whether to consider the indictment, after having given the person against whom the indictment is directed the opportunity to present his/her views, establishing a committee of inquiry composed of members of Parliament.⁷⁷ In **Spain**, a charge of treason or of any offence against the security of the state allegedly committed in the exercise of governmental functions may be brought only on the initiative of at least one quarter of the members of Congress and the approval of the absolute majority thereof.

31. In **Lithuania**, the consent of Parliament may be replaced by that of the President of the Republic when Parliament is not in session. In the case of **Italy**, if parliamentary authorisation is granted, the criminal investigation is conducted by a special judicial panel composed of three ordinary judges, in order to ensure impartiality and professionalism, as the panel ("tribunal of ministers, *tribunale dei ministri*") is entirely composed of professional judges. Any eventual trial for a minister's criminal liability takes place before the ordinary courts (*tribunali ordinari*), not before a special or constitutional court (Article 11 of Constitutional Law 1/1989). This reform removed the former competence of the Constitutional Court to judge ministers. In **Greece**, as provided in Article 86 of the Constitution, only the Parliament has the power to prosecute serving or former members of the Cabinet for criminal offences that they committed during the discharge of their duties.⁷⁸

shall be debated in the Plenary. The Grand National Assembly of Turkey may decide to refer the report to the Supreme Criminal Tribunal with two-thirds of the total number of its members by secret ballot.

⁷⁶ For the special constitutional impeachment procedure before the Constitutional referred to in Articles 65(3) and 66 of the Constitutional Court Act (*Zakon o Ustavnem sodišču*).

⁷⁷ Articles 5 to 10 of the Ministerial Responsibility Act of 1855.

⁷⁸ Article 86 of the Greek Constitution has been amended in various occasions. In 2001, the wording adopted aimed at preventing allegedly abusive prosecutions against Ministers and increased the number of filters (in the Parliament and within the Special Court's Judicial Council, the latter composed by professional high ranked judges chosen by lot). The composition of the Special Court was also modified to include high ranked judges from the Court of Cassation but also from the Council of State. It was specifically underlined that only the Parliament had the right to prosecute. However, following a series of financial scandals in which the allegedly responsible ministers

b. Jurisdiction

32. There are special rules on the competent jurisdiction to adjudicate cases of criminal ministerial responsibility. The two main categories are:

1. Countries in which cases of criminal ministerial responsibility are brought directly before a superior (ordinary) court to deal with these cases.
2. Countries with special courts of impeachment for government ministers;

b1. Specific ordinary court

33. In some countries, in derogation to the ordinary rules pertaining to criminal procedure, the applicable legal framework assigns to a specific ordinary court (of impeachment) the jurisdiction over the criminal prosecution of members of government. This may typically either be to the constitutional court, to the supreme court, or to another court. For instance, in **Algeria** the competent court is identified by the First President of the Supreme Court,⁷⁹ whereas in **Belgium**, if parliamentary authorisation is granted, the federal ministers are tried by the Brussels Court of Appeal for crimes committed in the exercise of their office, or by one of the five courts of appeal in the country for other crimes.⁸⁰ In **Andorra**,⁸¹ the **Netherlands** (with

were not prosecuted or were prosecuted for minor offences, serious criticisms addressed against the new version of Article 86, claiming that the assignment of the competence to accuse to a purely political body (i.e. the Parliament), without involvement of the judiciary, was contrary to a fundamental facet of the rule of law. Debates for the possible amendment of this constitutional provision concentrate on two particular issues:

(a) the relation of the Greek Constitution with the Council Regulation (EU) 2017/1939 of 12 October 2017 establishing the European Public Prosecutor's Office (EPPO).

(b) the power to initiate criminal actions against Ministers for offences committed within the exercise of their duties ceases to be an exclusive competence of Parliament but rather assigned either to a purely judicial organ or (preferably) to an organ of mixed composition, such as the *Commission des requêtes* in France.

⁷⁹ Under article 736 of the Code of Criminal Procedure of Algeria, when a member of the government, is charged with a crime or an offence committed in the exercise of, or on the occasion of exercising, their functions, the public prosecutor investigating the case shall transmit the file, via the hierarchical route, to the public prosecutor attached to the Supreme Court, who then submits it to the First President of the Supreme Court. The First President designates another court for the purposes of prosecution, investigation, and judgment.

⁸⁰ Under Article 103 of the Constitution of Belgium and the Law on the responsibility of federal ministers (*Loi du 25 juin 1998 réglant la responsabilité pénale des ministres*), when a minister is suspected of committing a criminal offense, only the public prosecutor at a court of appeal can initiate criminal proceedings. Article 2 of the Act regulating the criminal responsibility of ministers gives exclusive jurisdiction to the Brussels Court of appeal to try a minister for crimes they may have committed in the exercise of their office. For the trial of a minister for other crimes, the courts of appeal of the place of the crime, that of the suspect's residence, and that of the place where the suspect was found, have equal jurisdiction. According to the Special Majority Act regulating the criminal responsibility of ministers of the Communities or Regions, this is the court of appeal of the jurisdiction where the government, of which the minister concerned is a part, has its seat for crimes committed in the exercise of their office. However, the prosecution cannot proceed unless the Chamber of Representatives (or the subnational Parliament(s)) gives its authorisation. The Chamber, or the subnational Parliament(s), no longer initiates prosecutions itself but acts as a filter by evaluating the seriousness of the case. The law requires the Chamber, or the subnational Parliament(s), to check whether the request for prosecution is serious, and it can refuse authorisation if it determines that the prosecution is based on political motives, or if the evidence provided is irregular, arbitrary, or insignificant. Once authorisation is granted, the minister is tried by the court of appeal. Before 1998, ministers could only be judged by the Court of Cassation, which sat as the highest and only instance, denying the possibility of appeal. Under the current system, ministers benefit from a double degree of jurisdiction. It should also be noted that if the minister resigns before being summoned to appear before the Court of Appeal, and if the offence was committed outside the scope of his or her official duties, then the minister is treated as an ordinary citizen. This process continues to differentiate between offenses committed in the exercise of ministerial functions and those committed outside that scope, which affects certain procedural details, including which court of appeal is competent.

⁸¹ Under Article 74 of the Constitution of the Principality of Andorra, the *Cap de Govern* and the Ministers are subject to the same jurisdictional status as the *Consellers Generals*. According to Article 53(3), throughout their term, trials concerning *Consellers* shall be held by the Tribunal Superior, the highest Court in the Principality.

respect to offences pertaining to the official capacity of the member of the government),⁸² **Portugal** (only with respect to offences pertaining to the official capacity of the Prime Minister),⁸³ **Spain**,⁸⁴ and **Sweden** (with respect to offences pertaining to the official capacity of the member of the government)⁸⁵ the Supreme Court has jurisdiction over the criminal prosecution of a member of the government.

b2. *Ad hoc* court

34. In a limited number of countries, the applicable legal framework provides for the member of government to be prosecuted in front of an *ad hoc* court following a special procedure. Special courts of impeachment for government ministers, usually composed partly or wholly by members of parliament or persons appointed by parliament, may be found, *inter alia*, in Denmark, Finland, France, Greece, Iceland, Norway and Slovakia.⁸⁶

35. In **France**, for example, cases of criminal liability for ministers for acts committed in the exercise of their duties⁸⁷ are referred to the Court of Justice of the Republic, after the (judicial) investigation (*instruction*) carried out by a special commission composed of three judges from the Court of Cassation. Before reaching the Court of Justice of the Republic, the complaints

⁸² As previously mentioned, under Article 119 of the Dutch Constitution, if a member of the government commits a crime related to their work (*een ambtsmisdrijf*), the prosecution of the offence occurs in front of the Supreme Court and proceedings shall be instituted by Royal Decree or by a resolution of the Lower House. What constitutes an *ambtsmisdrijf* is regulated in Title XXVIII of Book II of the Criminal Code (see in particular Articles 355 and 356 for members of the government; although one should be mindful of the fact that the definition of 'civil servant' is broad so that other provisions could equally be applicable to members of government). Under Article 355 of the Dutch Criminal Code, ministers or state secretaries commit a crime related to their work if they (1) grant their co-signature to royal decrees, knowing that thereby the law or other laws or general administrative measures are being violated, (2) implement royal decrees, knowing that these are not provided with the required co-signature of a minister or state secretary, (3) issue orders or give commands or maintain existing orders or commands, knowing that thereby the law or other laws or general administrative measures are being violated, (4) intentionally fail to implement the provisions of the Constitution or other laws or general administrative measures, insofar as that implementation belongs to their duties due to the nature of the subject or has been expressly assigned to them. *Ambtsmisdrijven* also include criminal offences committed under one of the aggravating circumstances described in Article 44 of the Criminal Code. Under the Ministerial Responsibility Act of 1855 (*Wet ministeriële verantwoordelijkheid en ambtsdelicten leden Staten-Generaal, ministers en staatssecretarissen or Wmv*) an order to prosecute may be issued either by Royal Decree, which must specify the alleged offense, or by the House of Representatives. If at least five members of the House submit a written and reasoned indictment for suspected official misconduct, the House decides whether to consider the indictment, giving the accused individual an opportunity to respond in writing or orally. If the indictment is considered, a committee of inquiry made up of Members of Parliament (excluding those who submitted the indictment) is established. If the House fails to reach a final decision within three months (extendable by up to two months), the indictment is automatically dismissed. Once a prosecution order is issued, the Procurator General at the Supreme Court is required to act on it immediately.

⁸³ Under Article 53, paragraph a), of the Law on the Organization of the Judicial System (Law No. 62/2013, of August 26) and Article 11, n°. 3, paragraph a), of the Code of Criminal Procedure, read together, for crimes committed in the exercise of his/her duties and not in his/her personal capacity, the Prime Minister is tried in the Supreme Court of Justice by the full bench of the criminal sections of the Supreme Court.

⁸⁴ Under Article 102 of the Spanish Constitution, while in office, criminal proceedings against the President and the other members of the Government fall, for all criminal offences, within the jurisdiction of the Criminal Chamber of the Supreme Court, which is responsible for both the investigation and the trial. According to the second paragraph of that same Article, a charge of treason or of any offence against the security of the State allegedly committed in the exercise of their functions may be brought only on the initiative of at least one quarter of Members of Congress and with the approval of the absolute majority thereof. In such an instance, pursuant to Article 169 of the Standing Orders of the *Congreso de los Diputados*, the Speaker convenes a secret session of the full House to debate and vote on the matter. The person facing indictment may speak at any stage during the debate. If a majority of Congress members approve the indictment, the Speaker informs the President of the Supreme Court; if not, the initiative is considered rejected.

⁸⁵ In Sweden, under Chapter 13 of the Ordinance (1974:152) on the adopted new form of government, a government minister may only be convicted of a crime committed in the exercise of ministerial duties if he/she has, through the crime, grossly neglected his/her official duty. Prosecution is decided by the Committee on the Constitution and tried by the Supreme Court.

⁸⁶ Which was, however, a regular court by its composition.

⁸⁷ For an explanation of what constitutes an act committed in the exercise of functions, see footnote 55.

must follow a complex investigative and screening phase.⁸⁸ The Court of Justice of the Republic (CJR), established in its present form in 1993, consists of fifteen members⁸⁹: twelve Members of Parliament, elected in equal number from the National Assembly and the Senate, and three professional judges of the *Cour de cassation*, one of whom shall preside over the CJR. The applicable legal framework in **Greece** also provides for the prosecution of members of government for offences committed in the discharge of their duties by an *ad hoc* tribunal composed exclusively of senior judges: the Special Court.⁹⁰ Even in this case, the trial before the *ad hoc* tribunal is preceded by a special investigative and screening procedure.⁹¹ Similarly, in **Finland**⁹² and **Iceland**,⁹³ cases against a government minister for unlawful conduct in office

⁸⁸ In France, when a minister is suspected of having committed a criminal offense in their official capacity, any person claiming to be a victim may file a complaint. The public prosecutor at the Court of Cassation (*procureur général près la Cour de cassation*) also has the authority to initiate proceedings, either on their own initiative or upon receiving a complaint. All complaints and prosecutorial initiatives are first reviewed by a special filtering body called the *commission des requêtes*. This commission examines whether the alleged acts are indeed criminally prosecutable. It consists of judges from the Court of Cassation, the *Conseil d'État*, and the Court of Auditors (*Cour des comptes*). If the *commission des requêtes* considers the complaint to be admissible, the matter is referred for investigation (*instruction*) to a special commission composed of three judges from the Court of Cassation. This commission may take any step it deems necessary under the rules of criminal procedure. Once the investigation is complete, ministers are tried by the Court of Justice of the Republic. Its decisions may be appealed on points of law before the Court of Cassation.

⁸⁹ The Court of Justice of the Republic differs from ordinary courts by its political and judicial membership: Article 68-2 of the French Constitution.

⁹⁰ Under Article 86(4) of the Constitution of Greece, the Special Court, which serves as court of first and last instance, is composed by six judges of the Supreme Administrative Court and seven judges of the Supreme Civil and Criminal Court. The regular and alternate members are chosen by lot, after the prosecution has taken place, by the President of Parliament in a public sitting of the Parliament. The Special Court is chaired by the highest ranking of the Supreme Civil and Criminal Court members chosen by lot. The duties of public prosecutor in the Special Court are exercised by a member of the Public Prosecutor's Office of the Supreme Civil and Criminal Court who is chosen by lot together with his alternate.

⁹¹ Under Article 86(2) of the Constitution of Greece, prosecution, investigation, preliminary investigation or preliminary examination against a member of government for acts committed in the discharge of her/his duties cannot proceed unless Parliament first adopts a resolution to that effect. If evidence implicating such officials emerges during other investigations, it must be promptly sent to Parliament. According to Article 86(3), a proposal to prosecute must be submitted by at least thirty Members of Parliament. If approved by an absolute majority, Parliament appoints a special committee to conduct a preliminary examination. Following this, Parliament decides whether to proceed with prosecution, and retains the power to halt or suspend proceedings at any stage. If proceedings are not completed, including in cases where the statute of limitations expires, Parliament may, at the request of the accused or their heirs, establish a special committee to investigate the charges, with the participation of senior magistrates.

⁹² Section 114 of the Finnish Constitution; the prosecution is handled by the Prosecutor-General.

⁹³ Under Article 14 of the Icelandic Constitution, the *Althingi* may impeach Ministers on account of their official acts before the Court of Impeachment. The Act on the Court of Impeachment (No. 3/1963) establishes the following procedure. A decision to indict a cabinet minister is taken by parliamentary resolution in the Joint Houses of *Althingi*, which must precisely state the specific impeachment charges. The *Althingi* simultaneously elects a Parliamentary Prosecutor and an alternate, as well as a five-member parliamentary committee to monitor proceedings and assist the Prosecutor. The Speaker of *Althingi* immediately sends notice of the decision to the President of the Supreme Court, who serves *ex officio* as President of the Court of Impeachment, and the President then notifies the indictee as promptly as possible. On receiving the notice, the President assembles the tribunal. As promptly as possible, the President appoints a Supreme Court Attorney as defence counsel, in accordance with the indictee's wishes where there is no objection. The Parliamentary Prosecutor is responsible for the investigation, i.e., gathering evidence, preparing the case, and submitting proposals to the Court on appropriate measures to reveal the truth, while consulting with *Althingi*'s prosecuting committee. The President then issues a summons to the indictee with a minimum notice period of three weeks and decides the date and venue of the first sitting in consultation with the Prosecutor and defence counsel. At the first sitting, the Prosecutor formally opens the case, presenting the summons, the *Althingi*'s resolution, the indictment, and all available evidence. The defence counsel is given copies and sufficient time to respond, thereafter submitting the indictee's plea and the documents to be relied upon in the defence. The prosecution and defence are then heard before the Court. The Prosecutor questions the accused and presents witnesses; the defence counsel does likewise, with both sides afforded equal opportunity to speak. Once proceedings are complete, the case is immediately submitted for adjudication. The judges withdraw to confer and vote in camera, with the President holding the casting vote in the event of a tie. The written judgment is pronounced publicly by the President of the Court as promptly as possible, entered in the Court Register, and copies sent to the Speaker of the *Althingi* and the Minister of the Interior. Finally, at the request of a convicted party, the Court may permit a case to be reopened if new evidence emerges that would likely have led to an acquittal or a lesser sentence, or if the conviction may have been based on false evidence.

are heard by the respective Court of Impeachment, a tribunal with a special composition and mandate.⁹⁴ Likewise the previously examined cases, even in **Finland** charges against a member of government must first go through a special procedure (involving the Constitutional Law Committee of Parliament)⁹⁵ before reaching the High Court of Impeachment which is a special court dealing only with charges brought against a member of the Government, the Chancellor of Justice, the Parliamentary Ombudsman or a justice of the Supreme Court or the Supreme Administrative Court for unlawful conduct in office.⁹⁶ Interestingly, in **Finland**, **Greece**, and **Iceland** charges against a member of government are decided by Parliament, whereas in **France**, when a minister is suspected of having committed a criminal offense in their official capacity, any person claiming to be a victim may file a complaint. The public prosecutor at the Court of Cassation (*procureur général près la Cour de cassation*) also has the authority to initiate proceedings, either on their own initiative or upon receiving a complaint. In **Portugal**, the jurisdiction for the criminal trial of members of the Government follows the general rules of material jurisdiction as provided in the Code of Criminal Procedure. In **Norway**, after a constitutional revision in 2007, the Court of Impeachment (*Riksretten*) shall be composed of the five most senior judges permanently appointed of the Supreme Court and six representatives appointed by Parliament.⁹⁷ Similar systems are to be found in **Denmark** – where the number of professional judges and parliamentary appointees are equal – in **Finland** – where the President of the Supreme Court presides the High Court of Impeachment, which also includes the President of the Supreme Administrative Court, the three most senior-ranking Presidents of the Courts of Appeal and five members elected by the Parliament for a term of four years -, and in **Iceland** – with eight judges appointed by parliament as against seven professional judges, including the President of the Supreme Court acting as president.

36. A specialised criminal jurisdiction was established in **Slovakia** to deal with serious crimes, including offences committed by high-ranking public officials. Between 2005 and 2009, the Special Court (*Špeciálny súd*), together with a specialised prosecution office, exercised both *ratione materiae* jurisdiction over organised crime and corruption and *ratione personae* jurisdiction over certain public officials, including ministers. Following a judgment of the Constitutional Court, key elements of this framework were found unconstitutional, notably due to insufficient safeguards ensuring judicial independence, in particular in relation to a security-clearance mechanism involving the executive. A new Specialised Criminal Court

⁹⁴ Under Section 101 of the Finnish Constitution, the High Court of Impeachment consists of the President of the Supreme Court, presiding, and the President of the Supreme Administrative Court, the three most senior-ranking Presidents of the Courts of Appeal and five members elected by the Parliament for a term of four years. In Iceland, under Article 2 of the Act on the Court of Impeachment (No. 3/1963) the tribunal is composed by 15 judges, comprising: the 5 most senior Supreme Court judges (with the presiding judge of the Supreme Court as chair), the presiding judge of the District Court of Reykjavík, the Professor of Constitutional Law at the University of Iceland, and 8 persons elected by the Joint Houses of *Althingi* in proportional voting for a term of 6 years.

⁹⁵ Under Section 115 of the Finnish Constitution, an inquiry by the Constitutional Law Committee into a minister's conduct can be initiated based on a notification from the Chancellor of Justice or the Ombudsman, a petition by at least ten MPs, a request from another parliamentary committee, or by the Constitutional Law Committee itself. Due to its key role in assessing the legal responsibilities of government ministers, it is important to understand the Constitutional Law Committee of Finland's Parliament. Finland does not have a constitutional court; instead, constitutional review is carried out through various mechanisms involving all branches of government. The Constitutional Law Committee is one of Parliament's permanent committees, made up of MPs according to party strength, and plays a central part in the legislative process. It is appointed for each four-year parliamentary term and currently has 17 members and 9 alternates. While political, the Committee's work relies on legal reasoning based on constitutional texts, preparatory works, and its own precedents. It consults academic constitutional law and human rights experts and often includes MPs with a legal background. Unlike other committees, it does not hear from lobbyists, but only civil servants and relevant legal experts.

⁹⁶ The Court of Impeachment also hears charges brought against the President of the Republic under Section 113 of the Constitution. Strictly speaking, the High Court of Impeachment is not *ad hoc* court but a court of special jurisdiction. Under Section 114(2) of the Finnish Constitution, before adopting the decision to bring a charge against a member of the government, the Parliament shall obtain an opinion from the Constitutional Law Committee concerning the unlawfulness of the actions of the minister and shall allow her/him an opportunity to give an explanation. Under Section 116, charges may be brought if the minister has intentionally or through gross negligence seriously violated official duties or otherwise acted unlawfully.

⁹⁷ Constitutional Court, Decision PL. ÚS 17/08, 20 May 2009.

(*Špecializovaný trestný súd*) was subsequently established, retaining subject-matter jurisdiction over serious crimes but abandoning the personal jurisdiction over public officials, and illustrating a broader tendency to favour functional specialisation over status-based jurisdiction, in line with rule-of-law requirements.

3. General comments on special procedural regimes

37. Where special procedural regimes governing the prosecution of ministers exist, they may involve parliamentary authorisation, specialised investigative bodies, or designated judicial formations. They are often referred to as impeachment or constitutional prosecution mechanisms. While such systems are rooted in constitutional traditions of parliamentary oversight, the Venice Commission Updated Rule of Law Checklist⁹⁸ and GRECO 5th cycle emphasise that they must not compromise the effectiveness, independence or impartiality of criminal prosecution.

38. Parliamentary or political involvement in the initiation of special criminal proceedings introduces a structural link between political institutions and criminal justice. While such involvement may serve as a safeguard against abusive prosecutions, GRECO evaluations underline that it must be strictly based on objective legal criteria, embedded in transparent procedures, and accompanied by judicial safeguards ensuring that prosecutorial decisions remain legally, not politically, determined. The common final goal of these GRECO recommendations is that immunities do not hamper the conduct of investigations and the prosecution of corruption by the justice system.⁹⁹

39. In certain systems, authorisation requirements or procedural thresholds may significantly delay or condition the possibility of prosecuting members of government. Such mechanisms must not operate in a manner that undermines effective criminal accountability, particularly in relation to corruption, abuse of office or other serious integrity-related offences.

40. Procedural frameworks governing criminal prosecution of members of government may incorporate institutional or constitutional involvement by political bodies. While such involvement is not incompatible with the rule of law, it must remain strictly circumscribed by law, subject to effective judicial control, and designed in such a way as to prevent arbitrariness, selective enforcement or political instrumentalisation of criminal proceedings.

D. Application of rules on criminal ministerial responsibility in practice.

41. The extent to which the rules on criminal ministerial responsibility are applied in practice varies considerably across member States. The Venice Commission does not have any full empirical overview of the extent of criminal cases against government ministers in European countries in modern time. Since the adoption of the 2013 report on the relationship between political and criminal ministerial responsibility, however, criminal proceedings against members of government have become more visible. A number of high-profile cases illustrate an increased willingness to investigate and prosecute current or former ministers, which have also attracted significant public attention.

42. In March 2026 the Chamber of Deputies of the **Czech Republic** voted on whether to lift the parliamentary immunity of Prime Minister Andrej Babiš in connection with a long-running case concerning alleged fraud involving European Union subsidies. The motion to waive immunity was rejected, meaning that criminal proceedings could not continue during his

⁹⁸ Venice Commission, [CDL-AD \(2025\)002](#), The Updated Rule of Law Checklist, Section II, E and F.

⁹⁹ "Zero corruption, more integrity", Central Governments (Top executive Functions) and Law enforcement Agencies. Key principles, trends and challenges. GRECO, [Horizontal-study-5th-round](#), p. 39.

parliamentary mandate. In an earlier case, Petr Nečas, Prime Minister from 2010 to 2013, resigned as prime minister in June 2013 and soon ceased to be a member of parliament, following a major political scandal involving his chief of staff. With the loss of his parliamentary mandate, his immunity expired automatically, meaning that prosecutors did not need the Chamber's consent to pursue criminal proceedings. Nečas was later prosecuted in connection with alleged bribery involving offers of positions in state-owned companies to former members of parliament who had resigned their seats, and in 2019 he received a suspended sentence for false testimony in a related proceeding. As regards case-law, there is relatively limited judicial jurisprudence specifically concerning the criminal liability of ministers as such. However, the Constitutional Court decisions have emphasized that parliamentary immunity is a procedural safeguard protecting the independence of the legislature and must be interpreted restrictively, so that it does not become a general shield from criminal liability.

43. Since the entry into force of the current Constitution of **Finland** on 1 March 2000, there have been two cases in which an inquiry into the lawfulness of the official acts of a Minister have been initiated in accordance with Section 115 of the Constitution. In 2011, the Constitutional Law Committee of Parliament decided against prosecuting former Prime Minister, Matti Vanhanen, regarding conflict-of interest allegations. While acknowledging he should have recused himself from funding decisions involving a foundation that aided his campaign, the Constitutional Law Committee found insufficient grounds for charges. In 2020, Parliament's Constitutional Law Committee investigated Foreign Minister *Pekka Haavisto's* handling of the repatriation of Finnish citizens from the al-Hol displacement camp in northern Syria. While the Committee found that the Minister had acted contrary to the Administration Law and the Foreign Relations Act when trying to repatriate Finnish citizens from the al-Hol camp in northern Syria, the Committee nonetheless found that there was no reason to bring charges against the minister because a higher threshold for prosecution under Section 116 was not reached. According to Section 116 of the Constitution, a decision to bring charges against a Member of the Government may be made if he or she has, intentionally or through gross negligence, essentially contravened his or her duties as a Minister or otherwise acted clearly unlawfully in office. The decision of the Constitutional Law Committee was not unanimous, with the two Green MPs on the Constitutional Law Committee voting against the decision and giving a dissenting opinion. The *Haavisto* case generated a great deal of public discussion concerning the suitability of the Constitutional Law Committee of Parliament as a proper organ for handling matters concerning the legal responsibility of a Minister. One of the many concerns brought up was whether a Member of Parliament who has demanded that a case of malfeasance be initiated against a minister can sit on the Constitutional Law Committee deciding on the case. From this point of view and given the central role of the Constitutional Law Committee of Parliament, there is a risk of undue influence on the initiation, conduct and termination of criminal proceedings of the Members of Government. Since the Finnish constitutional system also requires parliamentary approval, parliamentary vote still may depend on party loyalty, not legal merits of the case.

44. In the last decades, **Greece** has sought to "judicialize" the Ministers' criminal prosecution. Different financial scandals where allegedly responsible ministers were not prosecuted although the majority of the Chamber had voted in favour of the minister's prosecution, serious criticisms were addressed against the new version of Article 86 of the Constitution, claiming that the assignment of the competence to accuse to a purely political body, the Parliament, without any involvement of the judiciary, was contrary to a fundamental facet of the rule of law as well as to generally recognized European standards in that domain. Criticisms concerning railway safety and ministerial accountability were intensified after a tragic train accident with numerous victims in February 2023. In 2025, the ruling majority decided not to proceed with the indictment of Ministers in connection with another major financial scandal. The actual debate for the amendment of Article 86 of the Constitution turns around the request that the organ competent to initiate criminal actions against Ministers for offences committed within the exercise of their duties be either a purely judicial organ or an organ of mixed

composition such as the *Commission des requêtes* of Article 68-2 of the French Constitution and not a political body.

45. Several former members of the Government of the **Republic of Moldova** have been involved in criminal proceedings for offences related to the exercise of public office as “exceeding official authority by a person holding a position of responsibility”, negligence in office, passive bribery, offences or abuse of office. These cases illustrate the practical application of the general provisions of criminal legislation also with respect to persons who have held governmental office.

46. In view of the cases described above, it does appear that members of Government are more frequently prosecuted and tried, which could reflect that immunities are more often lifted or that the threshold to allow the prosecution has been lowered. However, given the central role of the Parliament or its special committees in the procedure to authorise the impeachment (the lift of immunity) against a member of government, the risk of undue (political) influence is still high. As in the referred to in the *Haavisto* case, parliamentary vote might depend on party loyalty. Ministerial offences that should in principle be legally (and not only politically) sanctioned might go unpunished depending on non-legal reasons.

V. Assessment of legal frameworks and procedures for criminal ministerial responsibility

A. General remarks

47. The Venice Commission reiterates that legal accountability must be clearly distinguished from political one. While political responsibility belongs to the sphere of democratic governance, criminal prosecution, a sub-category of legal responsibility, is governed by strict legality requirements and procedural safeguards.¹⁰⁰

48. While the Convention does not prevent immunity of members of government as such, it does set some limits on how such rules can be applied, suggesting a general principle that the use of immunity must always be justified and not extend beyond what is proportionate and necessary in a democratic society. As the Court has stressed, a balance must be sought between political accountability and criminal liability, it is essential to ensure that criminal proceedings are not misused for the purpose of harming political opponents or as instruments in political conflict;¹⁰¹ criminal proceedings must be conducted in a manner that excludes their use for political purposes, finding a violation of the Convention where prosecution pursued an ulterior aim incompatible with the rule of law.¹⁰²

49. The Venice Commission recalls that the universal subjection of all to the law is a basic tenet of the Rule of Law. It implies that law should be equally applied and consistently implemented¹⁰³. Government ministers are not above the law. If a minister commits a criminal offence, then he or she should be subject to criminal sanctions, as everyone else (although the procedures may differ). At the same time, it is legitimate that special (impeachment) procedures apply, requiring

¹⁰⁰ See also Venice Commission, [Report on the relations between Parliament and the Government: confidence and responsibility](#), CDL-AD(2024)016

¹⁰¹ ECtHR, *Haarde v. Iceland*, 23 November 2017, § 85. The ECtHR delivered its judgment in the case of the former Prime Minister of Iceland, Mr Geir Haarde (cited in the 2013 report), on 23 November 2017. In response to the applicant's arguments that the process of deciding whether to bring charges against him had been arbitrary and political, the Court noted, and the Venice Commission shares this position, that the Contracting States had adopted varied approaches to the important and sensitive questions concerning the criminal liability of members of government for acts or omissions that have taken place in the exercise of their official duties and that it was not its task to impose any particular model. The Court was aware of the importance of ensuring that criminal proceedings were not misused for the purpose of harming political opponents or as instruments in political conflict.

¹⁰² ECtHR, *Merabishvili v. Georgia* [GC], 28 November 2017, *Tymoshenko v. Ukraine*, 30 April 2013.

¹⁰³ Venice Commission, [CDL-AD \(2025\)002](#), The Updated Rule of Law Checklist, § 93.

a certain threshold for initiating criminal proceedings against a government minister, as a protection against political harassment. However, such rules should therefore not be construed in such a way as to protect a minister that has clearly broken the law. On the one hand, special procedural barriers may unduly hinder prosecution; on the other hand, criminal proceedings may be instrumentalised for political purposes. Both risks, impunity and politicisation are addressed in GRECO 5th cycle evaluations and EU Rule of Law reports, which highlight the importance of institutional independence and objective prosecutorial decision-making. As GRECO points out, “although it is understandable that the requirement to obtain authorisation before instigating criminal proceedings could be considered, as it is in many countries, to be a necessary step in guaranteeing that prosecution is not carried out for political ends, assigning that authorising power to a judicial, non-political body, such as a high-level court, is an example of best practice that could be promoted”.¹⁰⁴

50. In parliamentary systems, mechanisms such as votes of no confidence or resignation operate as political consequences of parliamentary control. They do not constitute criminal sanctions and do not establish criminal responsibility; they respond to the principle of parliamentary autonomy, which is firmly embedded in the constitutional traditions of the member States of the Council of Europe and has been acknowledged by the European Court of Human Rights.¹⁰⁵ Government ministers are politically responsible for their political actions, and this is the democratically correct way to ensure accountability within the political system

51. The prosecution of ministers is conditioned by immunity rules and the possibility to lift them. Immunity is a way of protecting the institutions themselves against undue pressure from external actors, including both the political opponents and the prosecution. In this sense, it protects the effective democratic workings of the institution. As indicated by the Venice Commission in its 2014 report on the scope and lifting of Parliamentary immunities,¹⁰⁶ “there is in most countries today a far greater emphasis than before on transparency in political life, and a greater awareness of the potential negative effects of [parliamentary] immunity, in particular in the fight against political corruption”.

52. As mentioned in the 2013 report, criminal procedures against government ministers have to respect the rights guaranteed by Articles 6 ECHR and 14 (1) ICCPR as the right to a fair trial, independence and impartiality of the judiciary and the presumption of innocence, including the rights of defence set out in Articles 6 (3) ECHR and 14 (3) for persons charged with a criminal offence. The same goes for the principle of “no punishment and no penalty without law” in Articles 7 ECHR and 15 (1) ICCPR. These rules apply regardless of whether the person accused is an ordinary citizen or a government minister, and regardless of whether the minister is charged before the ordinary criminal courts or before a special court of impeachment. The classification of proceedings as “criminal” follows the autonomous criteria developed by the European Court of Human Rights. The Court uses three alternative criteria to determine whether a sanction is criminal or not – “the classification of the offence in domestic law, the nature of the offence and the nature and severity of the sanction”.¹⁰⁷

53. Consequently, measures such as imprisonment, fines (including suspended sentences), or disqualification from public office may fall within the criminal sphere even if classified

¹⁰⁴ Evaluation Report (Fifth Evaluation Round, preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies, Luxembourg, § 122.

¹⁰⁵ ECtHR, *Karácsony and Others v. Hungary*, 16 September 2014, § 78.

¹⁰⁶ Venice Commission, [CDL-AD\(2014\)011](#), Report on the Scope and Lifting of Parliamentary Immunities, §§ 22 and 27. European standards for assessing national rules on parliamentary immunity have been analysed in detail in its §§ 30-51 and are also applicable, *mutatis mutandis*, to the immunities of member of Governments of the present report.

¹⁰⁷ See for example ECtHR, *Engel and Others v. the Netherlands*, 8 June 1976, § 82; *Weber v. Switzerland*, 22 May 1990, §§ 31-34; *Ravnsborg v. Sweden*, 23 March 1994, § 30; *Putz v. Austria*, 22 February 1996 §§ 31 ff; *T. v. Austria*, 14 November 2000, § 61; *Ezeh and Connors v. United Kingdom*, 9 October 2003, § 82; *Alenka Pečnik v. Slovenia*, 27 September 2012, § 30.

differently under domestic law. Conversely, formally disciplinary measures may be considered criminal in nature where they are punitive and deterrent in character, as confirmed in the Court's case-law. This reinforces the need to assess prosecutorial frameworks by their practical effects on individual rights and institutional balance.¹⁰⁸ This approach is now embedded in GRECO methodologies and EU Rule of Law monitoring frameworks, ensuring that assessment focuses on substance rather than on formal labels. When trying to determine, according to the request from the Parliamentary Assembly, when "criminal responsibility would be in order" (as opposed to just political responsibility) all the three criteria established by the Court with regard to Article 6 are useful. Criminal liability does not depend on political evaluation but on the existence of a legally defined offence and sufficient evidentiary basis for prosecution. The Updated Rule of Law Checklist stresses that accountability must be grounded in law and not in political discretion or expediency.

54. As the comparative overview illustrates, there remains considerable diversity among Venice Commission member States as regards the procedures for holding members of government criminally responsible.

1. Equality before the law: Ordinary criminal procedures

55. In a number of countries, members of Government are subject exclusively to ordinary criminal procedures and cases are adjudicated by the ordinary courts following ordinary procedural rules. In many others, at least acts committed by members of Government in their private capacity are adjudicated to ordinary criminal procedure whereas for acts committed in the official capacity of the minister special procedures can be envisaged. The Venice Commission considers that this model shows a strong commitment to the principle of equality before the law, as set out in the updated rule of law checklist,¹⁰⁹ and reduces the risk of impunity.

2. Ministerial immunities

a. Non-liability of members of government for opinions expressed in the exercise of their functions.

56. Most countries have special rules on immunity for heads of state (kings and presidents) and for members of parliament, but rules on immunity for government ministers are less common, and to the extent that there are such rules, they are often less far-reaching. While there may be valid reasons for granting a certain degree of immunity to parliamentarians and heads of state, these reasons do not cover government ministers to the same extent, some of them being only protected inasmuch as they are also members of a parliament (see paragraph 18, above), insofar as they are to be held to a higher standard of scrutiny and accountability in managing the affairs of state. This is particularly relevant when inviolability is concerned and considering that the rationale for ministers' immunity is mainly functional, for acts performed in their official capacity.

57. In a number of Member States, ministers benefit from a category of absolute immunity (non-liability) against judicial proceedings for the exercise of freedom of speech, for opinions and statements expressed in the exercise of their official functions. In some cases, the non-liability is linked to their status as members of government whereas in some others it is linked to their condition of members of Parliament, in which case they also retain parliamentary immunity. In a third group of cases, the content of the immunity for members of government is the one guaranteed to the Members of Parliament.¹¹⁰

¹⁰⁹ Venice Commission, [CDL-AD \(2025\)002](#), The Updated Rule of Law Checklist, Section II, E.3.

¹¹⁰ For example, Montenegro (see footnote 51 51), North Macedonia (see footnote 52).

58. As stated in its Report on the Scope and Lifting of Parliamentary Immunities,¹¹¹ the Venice Commission considers that the freedom of opinion and speech is a key to true democracy. This core principle of non-liability appears to be relatively uncontroversial and uncontested in most countries, although there may be discussions as to the exact scope and criteria. In particular, there are concerns in relation to, on the one hand, the abuse of non-liability provisions when inciting hatred, violence and the destruction of the democratic system¹¹². Legal frameworks in member states of the Venice Commission have not been examined in this regard but as a general principle narrow exceptions should be defined for hate speech, accompanied by independent judicial review and proportionate sanctions. On the other hand, concerns exist also in relation to non-liability of members of the executive when their statements may directly affect private individuals and damage reputation or be used as instrument of political pressure. Ministers' statements regarding private individuals can give rise to abuses and an overly broad non-liability privilege risks placing ministers above the law and leaving individuals without effective remedies. At the same time, the opposite problem may arise, namely that limiting immunity could lead to criminal liability being imposed for political statements made in the proper exercise of the ministers' duties and leading to a chilling effect on political debate undermining the effective performance of executive functions. It is for the independent judicial system to determine whether the statement falls within the scope of non-liability. In any case, the non-liability protects, as indicated above, the function and not the individual person.

b. Departure from the principle of equality before the law: immunity *stricto sensu* or inviolability

59. The Venice Commission notes that immunity *stricto sensu* or inviolability against arrest, detention, investigation and prosecution in cases where there is an alleged criminal offence is the most problematic and controversial part of the concept of immunity. It constitutes a departure from the principle of equality before the law, which is a core element of the rule of law.¹¹³

60. As described in the comparative overview presented above, the main concern in the concept of immunity *stricto sensu* has already been revealed with the application of rules on criminal ministerial responsibility in practice: the initiation of the proceedings before the adjudication of the case of alleged ministerial criminal responsibility to the competent jurisdiction.

61. While the mechanism of prior authorisation by parliament or another political body to initiate criminal proceedings against ministers may serve to filter out manifestly unfounded accusations, it may also result in delays or prevent proceedings from being initiated. One concern is the composition of the parliament (or its specialised committees) as a political institution composed of representatives of political parties, and parliamentary procedures for lifting ministerial immunity may always be subject to political considerations that are not consistent with an objective and impartial approach. The actual debate for the amendment of Article 86 of the Greek Constitution reflects on the future composition (purely judicial or mixed

¹¹¹ [CDL-AD\(2014\)011](#), §§ 79-100.

¹¹² In its Resolution 2127 (2016) of 23 June 2016, "Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly", the Parliamentary Assembly concluded that: "[12.6] freedom of speech is an intrinsic part of parliamentary work and elected politicians must be able to debate, without fear, many different issues of public interest, including controversial or divisive subjects or matters relating to the operation of the executive or the judiciary; however, remarks and statements inciting hatred, violence or the destruction of democratic rights and freedoms can be excluded from the scope of non-liability; members of parliament who misuse the public forum could render themselves liable to internal disciplinary action in accordance with a transparent and impartial regulatory procedure, or even the withdrawal of their parliamentary mandate in the case of serious and persistent violations".

¹¹³ Venice Commission, [CDL-AD \(2025\)002](#), The Updated Rule of Law Checklist, Section II, E.3.

composition) of the organ that should be competent to initiate criminal actions against Ministers for offences committed within the exercise of their duties. Depending on the political circumstances, this may lead both ways – either that inviolability is lifted in cases where the allegations are clearly unfounded, or that inviolability is maintained in cases where the member concerned has clearly broken the law. The latter has been a particular concern of GRECO, which has observed in several cases a clear reluctance of parliamentarians to expose a member of their chamber to proceedings even in case of allegations of serious misbehaviour such as related to bribery, trading in influence or other mechanisms used in practice to prosecute such offences (abuse of power, breach of duties).

62. Another problematic aspect is that it is difficult to assess whether immunity should be lifted without going into the merits of the criminal charges and forming at least a preliminary opinion. In practice this may come into conflict with the principle of presumption of innocence, as protected by the Convention, and it may be perceived by the public and the media as a kind of political judgment on the question of guilt. This is also in breach of fundamental principles of separation of powers, under which it is for the courts alone (and certainly not for a political assembly) to assess individual cases of criminal responsibility.

63. In this respect, the Venice Commission considers that the parliamentary body handling a request to lift inviolability should not make a legal examination of the case as such and, in particular, it should not pronounce itself on the guilt of the member of government concerned, or on whether there is justification for criminal prosecution. The decision should be based on the facts and merits of the case as submitted by the authorities and the member concerned, and not on other political and outside considerations.

64. This does not mean that national constitutional rules on inviolability are contrary to general principles of the rule of law and the separation of powers. Such rules exist in a number of countries, where they are part of the system of “checks and balances”. On the other hand, there are also legal and political norms and standards in any well-functioning democracy that effectively hinder the political majority from misusing the criminal legal system against individual political opponents. It should be emphasised that the rules and principles on the independence and impartiality of the judiciary and the public prosecuting authorities are the most important guarantee, much more important and relevant in this regard than rules on immunity.¹¹⁴

65. The Venice Commission considers that rules on inviolability should be construed, interpreted and applied in a restrictive manner, and that it should always be possible to lift inviolability, following clear and impartial procedures and on the basis of established criteria such as the fact of being caught in *flagrante delicto* or in cases concerning particularly *serious crimes* as well as where the alleged offence is unrelated to the ministerial functions, among others. A waiver of the inviolability should also be possible for the minister concerned in order to have the case considered by the ordinary public prosecutor and eventually before ordinary courts.

66. The Venice Commission notes that recent developments indicate a strengthening of legal frameworks addressing corruption and related offences, as well as an increased willingness to apply them in practice. This trend is reflected in the work of GRECO, which has recommended that corruption offences be expressly excluded from the scope of immunities, while in other cases it has demanded that in practice immunities be lifted based on objective and fair criteria. Within the European Union, the referred trend is also present in the activities of the European Public Prosecutor's Office (EPPO), which has opened investigations involving high-level officials in several States. Right to a fair trial, independence of the judiciary, compliance with the principle of legal certainty and foreseeability of criminal law are fundamental.

¹¹⁴ See CDL-AD(2014)011, §§ 151 and 153.

67. The relevant case-law of the European Court of Human Rights clarifies the requirements of Article 6 of the Convention to be respected also in the impeachment proceedings, so that the necessary standards of fairness are upheld regardless of the special features of the proceedings and therefore shielding the risk of politicisation.¹¹⁵ This includes the right of access to criminal proceedings in case of refusal to lift immunity of a minister for defamation allegedly committed against the applicant, a member of Parliament.¹¹⁶ The Court has recalled that although some limitations on the right of access to a court must be regarded as inherent in the system of parliamentary immunities, it would not be consistent with the rule of law in a democratic society, or with the basic principle underlying Article 6 § 1, if a State could, without restraint or control by the court, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities on categories of persons.¹¹⁷ The referred standards also include the assessment of the independence (and impartiality) of the court of impeachment, which might be (partially) composed of lay judges, Article 6 § 1 requiring that the court of impeachment be independent not only from the executive and the parties but also from the legislator.¹¹⁸

68. The Commission further observes that the effectiveness of national systems depends not only on legal frameworks but also on their practical application. For example, in some jurisdictions, parliamentary authorisation requirements have resulted in cases not being pursued, while in others, prosecutorial action has proceeded without such obstacles. Specific concerns may be raised in cases involving members of government, where structural or *ad hoc mechanisms* require parliamentary approval allowing political actors to influence the initiation, conduct or termination of criminal proceedings, which could facilitate undue influences by political actors and undermine public confidence in the rule of law. The Commission reiterates that, if at all, Parliament should only assess whether the accusations are manifestly ill-founded.

69. Some recent cases have brought certain situations of (un)due influence by political actors to light as the concerns expressed about the alleged politicisation of the Parliament's Constitutional Law Committee of Finland which investigated in 2020 certain actions of a minister. The Committee concluded that the minister had acted contrary to the applicable laws but found that there was no reason to bring charges against him because a higher threshold for prosecution was not reached. This decision generated discussions concerning the suitability of the Constitutional Law Committee of Parliament as a proper (political) organ for handling matters concerning the legal responsibility of a minister. Moreover, one of the many questions brought up was whether a Member of Parliament who has requested that the case of malfeasance be initiated against a minister can sit on the Constitutional Law Committee deciding on the case. Other filtering bodies in impeachment systems as the *commission des requêtes* in France or the *tribunal des ministres* in Italy, for example, have chosen a totally different composition.

70. The role of prosecutorial discretion is of central importance. In systems where prosecutors enjoy a high degree of independence, such as in Italy, investigations involving high-level

¹¹⁵ ECtHR, *Haarde v. Iceland*, cited above, §§ 86-96 (insofar as pre-trial stage of proceedings is concerned) : when examining the impeachment proceedings initiated before the Parliament against the applicant, former Prime minister, the Court took into account (i) the pre-trial collection of the evidence; (ii) the time given to the applicant to prepare his defence and the information of the nature of the accusation and the adversarial character of the proceedings; (iii) the application of the rules of procedure ; (iv) the prosecutor's involvement during the examination of the case by the PRC to determine whether the principle of the presumption of innocence had been breached ; (v) the non-political character of the charges.

¹¹⁶ ECtHR, *Bakoyanni v. Greece*, 20 December 2022: Criminal proceedings were the only possible remedy and there was no clear connection between the minister's alleged conduct and his parliamentary or ministerial activities. See also ECtHR, *Anagnostou-Dedouli v. Greece*, 16 September 2010.

¹¹⁷ ECtHR, *Bakoyanni v. Greece*, cited above, § 58.

¹¹⁸ ECtHR, *Haarde v. Iceland*, §§ 105-108. See also ECtHR, no. 28972/95, *Ninn-Hansen v. Denmark*, decision of 18 May 1999.

officials have been pursued actively.¹¹⁹ Conversely, in systems where prosecutorial independence is questioned, concerns have been raised regarding both inaction and selective enforcement. Recent assessments by GRECO have highlighted persistent challenges in several member States regarding the independence of prosecutorial authorities and the effectiveness of investigations into high-level corruption. Regardless of the system chosen by a state for the organisation of the prosecution office - whether prosecutors are functionally independent or hierarchically subordinated to the executive – GRECO’s long-standing position is that safeguards must be in place to ensure that corruption investigations are conducted without any political or other undue influence.^{120/121}

71. The case-law of the Court, for its part, considers that the prosecuting authority is not bound by the obligations of independence and impartiality which Article 6 imposes on a “court” in the framework of criminal proceedings as it is not called to “determine the merits of a criminal charge,¹²² unless, even in the absence of any formal finding, that a statement of a public official concerning a person charged with a criminal offence reflects an opinion that she is guilty before this has been proved according to law. In this situation, the principle of the presumption of innocence may be infringed not only by a judge or court but also by other public authorities and representatives of the State, including prosecutors.¹²³ However, the Court has strengthened the requirement of institutional independence in criminal investigations involving high-level officials, in particular considering that undue executive interference with prosecutorial authorities is not in accordance with the Convention.¹²⁴ The Venice Commission also underlines that sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence, observing that the independence of prosecutors is not of the

¹¹⁹ For example, the ‘Open Arms case’ which rescued migrants at sea, was prevented from entering Italian ports by order of minister Salvini. Authorization to proceed against Salvini was requested and obtained before the Senate. Salvini was formally indicted. The trial began in September 2021 and lasted over three years, including testimonies from a former Prime Minister and two ministers. The Prosecutor’s Office requested Salvini be sentenced to six years of imprisonment. In December 2024 the tribunal of Palermo acquitted Senator Salvini of charges of aggravated kidnapping and refusal to perform official duties considering that the case was unfounded.

¹²⁰ “Zero corruption, more integrity”, cited above, p. 39.

¹²¹ See, among many others, Poland, - Opinion on the draft amendments to the Law on the Public Prosecutor’s Office, [CDL-AD\(2024\)034](#) § 23. “The Venice Commission has earlier observed that there is no common standard on the organisation of the prosecution service. However, sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence. The Committee of Ministers of the Council of Europe requires member States to ensure that public prosecutors are free from “unjustified interference” with their professional activities.

¹²² ECtHR, no 24326/24, [Fillon and others v. France](#), Decision (Committee) of 25 September 2025. The case concerned the alleged lack of independence and objective impartiality of the public prosecutor for financial matters prosecuting a former French Prime minister and his wife for embezzlement of public funds, on the grounds that the latter had been subjected to pressure during the investigation phase which allegedly vitiated the trial with unfairness and on account of the method of appointing public prosecutors and the status of the public prosecutor’s office in France.

¹²³ ECtHR, *Haarde*, cited about, §§ 94 and 96:

94. “the Convention does not guarantee a right to an impartial prosecutor. However, the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial required by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. The principle of the presumption of innocence may be infringed not only by a judge or court but also by other public authorities and representatives of the State, including prosecutors (...).”

96. [In the present case, the *Court* did] “not find that any measures taken or events occurring during the handling of the case by the PRC, Parliament and Parliament’s prosecutor affected the applicant’s position in a manner that could render the subsequent stages of the proceedings unfair.”

See also ECtHR, *Nadir Yildirim and Others v Türkiye*, 28 November 2023.

¹²⁴ In ECtHR *Kövesi v. Romania*, 5 May 2020, the applicant was removed from her position as chief prosecutor. This removal and the reasons justifying it can hardly be reconciled with the particular consideration to be given to the institutional independence of prosecutors (§ 208).

same nature as the independence of judges and that certain asymmetry between institutions and procedures applicable to judges and prosecutors is inevitable.¹²⁵

72. *Substantive* national rules on ministerial criminal responsibility must comply both with the relevant case-law of the European Court of Human Rights on article 7 of the Convention and also be assessed in light of the fundamental requirements of the rule of law, in particular as reflected in the Updated Rule of Law Checklist, including legal certainty, accessibility, foreseeability and predictability, clarity, proportionality, the principle of non-retroactivity of criminal law,¹²⁶ *nullum crimen et nulla pena sine lege*, equality in law and before the law, etc.¹²⁷

73. The guarantee enshrined in Article 7 of the Convention, which is an essential element of the rule of law, should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment.¹²⁸ Article 7 lays down the principle that only the law can define a crime and prescribe a penalty and states that no one may be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

74. Furthermore Article 7 has been interpreted as to embody also certain qualitative requirements, including those of accessibility and foreseeability.¹²⁹ Criminal law cannot be extensively construed to the detriment of the accused, for instance by way of analogy.¹³⁰ Article 7 does not require, however, absolute predictability. This requirement is satisfied where the individual can know from the wording of the relevant provision – and, if need be, with the assistance of the courts' interpretation of it and with informed legal advice – what acts and omissions will make him criminally liable. However clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation.¹³¹ There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen.^{132/133}

75. In some countries there are special rules on criminal responsibility for offences that only government ministers may commit, such as the breach of constitutional and other legal obligations inherent in the office as minister. If a minister gravely breaches a clear constitutional obligation with acts carried out while in office which undermine the authorities' credibility this may have serious consequences for the political system and the public interest and may legitimately be categorised and treated as a criminal offence. However, to the extent that the constitutional obligation is of a more political nature, then this should first and foremost

¹²⁵ See, for example, [CDL-AD\(2024\)034](#), cited above, §§ 23-24.

¹²⁶ Which is an absolute non-derogable principle under European and international human rights frameworks (Articles 15 ECHR and 4 ICCPR).

¹²⁷ Cf. The updated Rule of law Checklist [CDL-AD\(2025\)002](#), Section II, B.

¹²⁸ ECtHR, *Haarder*, cited above, § 127.

¹²⁹ ECtHR *Huhtamäki v. Finland*, 6 March 2012, § 44; *Cantoni v. France*, 15 November 1996, § 29; *Coëme and Others v. Belgium*, 22 June 2000, § 145; *E.K. v. Turkey*, 7 February 2002, § 51.

¹³⁰ See for example ECtHR *Alimuçaj v. Albania*, 7 February 2012, § 149; *Jorgic v. Germany*, 12 July 2007, § 100.

¹³¹ See for example ECtHR *Jorgic v. Germany*, quoted above, § 101; *S.W. v. United Kingdom*, 22 November 1995 and more specifically *Haarder*, cited above, § 127.

¹³² ECtHR *Haarder*, cited above, § 127.

¹³³ In ECtHR *Haarder*, § 130, the Court observes, taking into account the central importance of Article 17 of the Icelandic Constitution is the constitutional order. As stated by the Court of Impeachment, the applicant was responsible for ensuring that the requirements of Article 17 were complied with. Under the circumstances of the present case, the Court considers that even though the notion of "important government matters" may necessarily be a matter of interpretation, the said provision cannot be regarded as lacking in sufficient clarity.

be sanctioned as an issue of political-constitutional liability and criminal charges should be considered only as the *ultima ratio*.

76. A great challenge, both in principle and sometimes also in practice, is the fact that government ministers in many countries are subject to very wide and vague provisions on criminal sanctions for “*abuse of office*”, “*misuse of powers*”, “*excess of authority*” or similar conducts. The Venice Commission observes that there may be a perceived need for such general clauses, which may cover the many various forms of grave offences that public officials may commit, and which it is not easy to regulate in detail in advance. At the same time, the Commission holds that blanket criminal provisions are problematic, both with regard to the qualitative requirements of Article 7 of the Convention and other basic requirements under the rule of law, such as foreseeability and legal certainty, and that they are also particularly vulnerable to political misuse for political purposes.¹³⁴ According to recent case-law of the European Court of Human Rights, when using this “blanket reference” technique in criminalising acts or omissions, the referencing provision and the referenced provision, read together, must enable the individual concerned to foresee, if needs be with the help of appropriate legal advice, what conduct would make him or her criminally liable.^{135/136} The most effective way of ensuring clarity and foreseeability is for the reference to be explicit, and for the referencing provision to set out the constituent elements of the offence. As for the concrete interpretation of the national criminal provisions on “abuse of office”, “excess of authority” and similar conducts, the Venice Commission recalls that they must be interpreted narrowly and applied with a high threshold and refers to paragraphs 102 and 103 of its 2013 report.¹³⁷

VI. Conclusions

77. The Venice Commission reiterates that criminal accountability must be clearly distinguished from political one. While political responsibility belongs to the sphere of democratic governance, criminal prosecution is governed by strict legality requirements and procedural safeguards.

78. The European Court of Human Rights has recalled that a balance must be sought between political accountability and criminal liability, criminal proceedings must not be misused for the purpose of harming political opponents or as instruments in political conflict; criminal proceedings must be conducted in a manner that excludes their use for predominantly political purposes.

¹³⁴ Cf. ECtHR *Liivik v. Estonia*, 25 June 2009. In this Judgment (§ 101) the Court considered that the interpretation given to a former provision of the Estonian criminal code on misuse of official position, “involved the use of such broad notions and such vague criteria that the criminal provision in question was not of the quality required under the Convention in terms of its clarity and the foreseeability of its effects”.

¹³⁵ ECtHR, *Advisory opinion, requesting by the Armenian Constitutional Court, concerning the use of the “blanket reference” or “legislation by reference” technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law [GC]*, 29 May 2020. The request referred to the fact that Mr Kocharyan, former President of Armenia, had been accused of an offence, which was defined by the use of the technique of “blanket reference” or “legislation by reference”. In the case of Article 300.1 of the 2009 Criminal Code, that legislative technique had been used to refer to Articles 1 to 5 and 6 § 1 of the Constitution, which had supreme legal force and were formulated with a higher level of abstraction than the provisions of the Criminal Code. The Court saw no reason to depart from its finding in the *Haarde* judgment, to the effect that Article 7 of the Convention did not exclude that evidence of existing constitutional practice might form part of the national court’s overall analysis of foreseeability of an offence based on a provision of a constitutional nature. Furthermore, both of the above cases, where the Court had found no breach of Article 7, appeared to indicate that particular caution might be required from professional politicians or high office holders in assessing whether a specific conduct might entail criminal liability.

¹³⁶ See also *Saakashvili v. Georgia*, 23 May 2024, §§ 145-146.

¹³⁷ ECtHR, *Advisory opinion concerning the use of the “blanket reference” or “legislation by reference” technique in the definition of an offence ... cited above*, § 74.

79. Criminal prosecution is conditioned by rules on immunity insofar as they may constitute a bar to the exercise of jurisdiction. Criminal responsibility concerns whether a government member can be prosecuted. Immunity refers to whether, and under what conditions, legal proceedings may be brought against that person and to which extent. Immunity allows ministers to perform their official functions without fear of personal prosecution, ensuring governmental stability and effective governance. Immunity is therefore meant to serve the public interest but at the same time needs to be limited so as not to obstruct justice or accountability. Its removal or limitation is key to ensuring that ministers are not above the law.

80. The Venice Commission observes that there remains considerable diversity among its member States as regards the procedures for holding members of government criminally responsible. The Commission considers, on the one hand, that it is not its role to impose or even show a preference for one model or another and, on the other hand, that recent developments show a gradual evolution in certain systems, in particular with regard to the strengthening of judicial guarantees and a tendency in some States to reconsider the scope and justification of special procedures in relation to immunities.

81. Functional non-liability is generally (see, however, para. 58, above) considered as acceptable. However, the Commission considers it necessary to point out that absolute and even purely functional immunity *stricto sensu* could be unnecessary or less justified in legal systems respectful of the Rule of Law. National constitutional rules relating to inviolability, where they exist, are consistent with the general principles of the rule of law and the separation of powers insofar as they form part of an impartial judicial system and enable ministers to be held to account through transparent and trustworthy legal mechanisms. Such rules exist in a number of countries where they are part of the system of “checks and balances”.

82. Ministerial immunity (*stricto sensu*) and the consequent special procedures followed to lift it in order to allow the initiation of criminal prosecution of ministers could be considered more necessary in systems where Rule of Law guarantees are less reaffirmed, in particular in cases where the Judiciary might be influenced by political interests, the system of check and balances is imperfect or the right to a fair trial is compromised, among others. In these cases, the concept of immunity *stricto sensu* as a legal shield designed to protect the executive from judicial or political pressure while in office and ensure that ministers be effectively able to fulfil their functions is more common. But even in these cases the Venice Commission recalls that immunity is meant to protect not the individual him/herself but the institution itself and that special procedural barriers may unduly hinder prosecution and lead to impunity¹³⁸. The Commission considers in this respect that the procedure for the lifting of immunity *stricto sensu* (inviolability) to enable the initiation of a minister’s prosecution also needs to respect the Rule of law guarantees and avoid risks of politicisation of criminal proceedings.

83. The Venice Commission considers that as long as the charges brought against a minister are of a “criminal” nature, according to Article 6 of the Convention, the same basic requirements apply both to ordinary criminal procedures and special impeachment procedures. These cover the rights to a fair trial, including rights of defence, presumption of innocence, the independence and impartiality of the judiciary, as well as the principle of “no punishment without law” guaranteed by Article 7, which includes the principles of legal certainty and predictability.

84. Comparative developments since its 2013 report indicate a tendency in some States to reconsider the scope and justification of special procedures, progressively limiting the scope

¹³⁸ See, *mutatis mutandis*, ECtHR, Selahattin Demirtaş v. Turkey (no. 2) [GC], § 394, 22.12.2020: “parliamentary immunity is a privilege granted not to members of parliament on an individual basis but to the institution of Parliament, to guarantee its smooth operation”, cited in Venice Commission Opinion on the Republic of Moldova on the draft Law on the Status, Conduct, and Ethics of Members of Parliament, [CDL-AD\(2026\)032](#).

of political filtering mechanisms, while maintaining parliamentary involvement in specific circumstances. The Venice Commission shares GRECO monitoring findings regarding a continued trend towards narrowing the scope of special procedures and assuring their transparency and efficiency, and reinforcing the role of ordinary criminal justice systems, particularly for acts unrelated to ministerial functions.

85. Overall, the Commission considers that the challenge of criminal responsibility of members of government lies not on existing legal frameworks, but in their effective, impartial, and depoliticised application. These include the need to ensure effective accountability of members of government while safeguarding the independence of criminal justice and avoiding the risk of politicisation. The distinction between political disagreement and criminal offences seems to be more understood and respected, which is globally a sign of a mature and well-functioning democratic system.

86. The Venice Commission takes note of the recent changes in the way civil society perceives immunity. Public opinion has shifted from seeing immunity as a legitimate institutional safeguard to associating it with impunity, corruption protection or even democratic backsliding. At the same time, *limited* immunity can still be considered as necessary to prevent politically weaponized prosecutions. The debate today is therefore less about abolishing immunity entirely and more about narrowing its scope, increasing oversight and preventing abuse.

87. The Venice Commission remains available for further consultations on this important subject, whether on a general level or on a country-specific basis.