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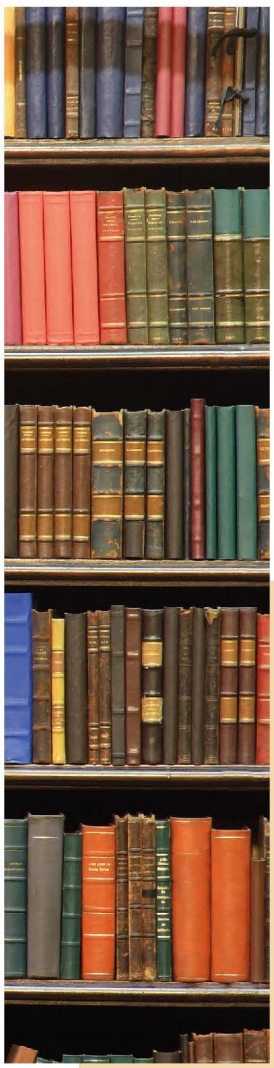

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In-depth analysis for the JURI Committee

EN

2015

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

LEGAL AFFAIRS

Parliamentary immunity in Poland

IN-DEPTH ANALYSIS

Abstract

This in-depth analysis was commissioned by the policy department on citizens' rights and constitutional affairs at the request of the JURI committee. It examines the immunity of Polish parliamentarians, i.e. Deputies to the Sejm and Senators. It describes forms of immunity, their scopes, taking into account the jurisprudence of the Polish Supreme Court and the Polish Constitutional Tribunal, as well as parliamentary procedures regarding waiving or defending the immunities. It also includes a description of legal and practical problems related to an ordinary application of immunity rules.

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CONTENTS

LIST OF ABBREVIATIONS

AEMDS Act of 9th May 1996 on the Exercise of the Mandate of a Deputy or Senator

CCP Code of Criminal Procedure of 6th June 1997

CCR Commissioner for Citizens' Rights

CT Constitutional Tribunal

RR Rules and Regulations of the Senate

SC Supreme Court

EXECUTIVE SUMMARY

Polish parliamentarians (Deputies to the Sejm and Senators) enjoy a broad set of immunity privileges, i.e. an indemnity (called "material immunity", in Polish "immunitet materialny") and three immunities that may be jointly called "inviolability". There are no differences in application of all forms of immunity to members of the Sejm and the Senate.

Just as in many contemporary democracies, the Polish parliamentary immunity is not perceived as a personal privilege of a parliamentarian, but as a safeguard of independence of Members of Parliament (MPs) while performing their parliamentary duties and, in consequence, as an important guarantee of proper functioning of the Sejm and the Senate. On the other hand the immunity is considered as an exception to the constitutional principle of equality, since it affords parliamentarians a privileged legal status compared to other citizens. Thus jurisprudence and scholars call for a strict interpretation of the scope of all forms of immunity. However, in practice this guideline is not always followed.

Material immunity ensures protection of all activities that Deputies and Senators perform within the scope of the parliamentary functions. For such activities MPs may only be held accountable before the Sejm or, respectively, the Senate, unless while performing such activities, the MP "has infringed the rights of third parties". In the latter case a Deputy or a Senator may be brought to a court (of any kind) only upon consent of the Sejm or the Senate.

An important feature of material immunity is its "permanence", meaning that the protection does not end on the day of expiry of parliamentary mandate, but in fact lasts until the end of life of a person who in the past served as an MP.

The other three forms of immunity ("the privileges of inviolability) protect MPs' safety while exercising the mandate, allowing them to perform their function freely, i.e. without threats of any kind of deprivation of liberty or imposing criminal proceedings. The most important one, called **formal immunity** (in Polish "immunitet formalny"), encompasses a prohibition of bringing MPs to criminal accountability without the consent of the Sejm or the Senate. A similar legal solution (called in Polish "nietykalność") applies to **prohibition of detaining or arresting** MPs without a consent of the respective parliamentary chamber. The set of privileges of inviolability is supplemented with a possibility of Sejm's or Senate's **requests to suspend criminal proceedings instituted against a person before the day of his election as Deputy or Senator**.

All forms of inviolability privileges are temporal, since the protection ends on the day of expiry of MPs' mandate. The decision on whether to protect them rests on the will of the respective chamber, since two former privileges can be waived and the latter one defended. An important solution concerning formal immunity is that an MP may grant his/her consent to be brought to criminal accountability. In such cases no waiver is necessary.

Key procedural issues concerning parliamentary immunity are determined in the Constitution of the Republic of Poland. Apart from the Constitution a legal act which clarifies the scope of immunity and sets out detailed procedural rules is a statute – the Act of 9th May 1996 on the Exercise of the Mandate of a Deputy or Senator. Finally, immunities are to some extent covered by the provisions of the Standing Orders of the Sejm and the Rules and Regulations of the Senate.

1. INTRODUCTION

KEY FINDINGS

- The Constitution of the Republic of Poland grants Polish parliamentarians four immunity privileges, one of which, the so-called material immunity, may be classified as an indemnity (or the privilege of "non-liability" or "irresponsibility"), while the other three – as various types of inviolability.
- Parliamentary immunity is not considered as a personal privilege of a Deputy or a Senator, but as an important safeguard of a free parliamentary mandate and proper functioning (independence) of the Sejm and the Senate.
- In the context of constitutional rights and freedoms all forms of immunity are interpreted as exceptions to the principle of equality set out in Article 32 of the Constitution.

1.1. Overview of parliamentary immunities in Poland

Since the time of the so-called March Constitution of 1921 all Polish constitutions have provided various forms of parliamentary immunity. The current one, the Constitution of the Republic of Poland of 2nd April 1997, contains in its Article 105 considerably detailed rules concerning the scope of various forms of immunity, as well as basic procedural solutions. Detailed rules clarifying the scope of some types of immunity, procedures concerning waiving immunities and, in case of the so-called formal immunity, granting consent – by Deputies or Senators – to be brought to criminal accountability, are laid down in the Act of 9th May 1996 on the Exercise of the Mandate of a Deputy or Senator[1]. Furthermore some procedural rules are included in the Standing Orders of the Sejm of the Republic of Poland of 30th July 1992[2] and in the Rules and Regulations of the Senate of 23rd November 1990[3]. Still parliamentary rules of procedures play only a secondary role in determining the system of Polish parliamentary immunity. It is a consequence of Article 105 para. 6 of the Constitution, according to which detailed principles of and procedures for bringing Deputies to criminal accountability have to be specified by statute, instead of internal parliamentary regulations.

The Constitution grants Polish parliamentarians four privileges, which is a matter of continuous controversy in public debates. According to many publicly expressed opinions the scope of parliamentary immunity is too broad, resulting in factual impunity of Deputies and Senators. However, a detailed analysis of legal rules concerning immunity and a comparison of them to equivalent provisions of other contemporary legal systems show that not all of these opinions are well justified, as they seldom take into account important purposes of introduction of immunity protection into the Polish legal system. Still the debate continues, although no amendments of the Constitution, aimed at modifying the scope of parliamentary immunity have been proposed for a long time.

The first of immunity privileges is the so-called material immunity (in Polish "immunitet materialny"), protecting MPs' activities performed within the scope of their parliamentary mandate. This type of immunity may be classified as a "non-liability" privilege or "the

[1] Consolidated text in Dziennik Ustaw of 2011, no. 7, item 29 with amendments.
[2] Consolidated text in Monitor Polski of 2012, item 32 with amendments.
[3] Consolidated text in Monitor Polski of 2014, item 529 with amendments.

privilege of "irresponsibility"[4], but, in contrary to similar immunities known in many democratic countries, its aim is not limited to protecting MP's "freedom of speech", but, as already pointed out, to the whole set of activities related to the exercise of parliamentary mandate. Besides, even with regard to such activities, the Constitution allows, in certain circumstances, initiating court proceedings against a parliamentarian. The other three forms of immunity may be jointly perceived as a privilege of "inviolability", because their common aim is to guarantee a free execution of parliamentary mandate, i.e. without threats of any kind of deprivation of liberty or imposing criminal proceedings. The inviolability privileges include protection from criminal proceedings, known as the so-called formal immunity (in Polish "immunitet formalny"), protection against widely interpreted detention and arrest (in Polish referred to as "nietykalność"), as well as a unique legal solution, i.e. a request of the Sejm (or, respectively, the Senate) to suspend criminal proceedings instituted against a parliamentarian before the day of his/her election. All these forms of immunity are temporal and can either be waived or – in case of the latter one – defended.

Article 105 of the Constitution provides as follows:

Article 105

1. A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.

2. From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.

3. Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.

4. A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paras. 2 and 3 shall not apply.

5. A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.

6. Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute[5]*.*

It should be added that according to Article 108 of the Constitution its Article 105 applies, as appropriate, to Senators.

[4] A concise description of forms of parliamentary immunity may be found in the Report on the scope and lifting of parliamentary immunities, European Commission for Democracy through Law (Venice Commission), 23rd August 2015, http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)011-e.

[5] All translations into English of rules of the Constitution and other legal acts, with exceptions of Article 23 of the Civil Code (see p. 15) and Article 10b para. 2 of the AEMDS (see p. 34) are taken from E. Gierach, P. Chybalski (ed.), Polish Constitutional Law. The Constitution and Selected Statutory Materials, Wydawnictwo Sejmowe, Warsaw 2009.

1.2. Parliamentary immunity in the context of constitutional principles

Polish constitutional lawyers unanimously link all forms of parliamentary immunities with the principle of a free parliamentary mandate. According to Article 104 para. 1 of the Constitution Deputies and Senators are representatives of the Nation and cannot be bound by any instructions of the electorate. The principle of the free mandate results in two basic features of a legal status of Deputies and Senators. The first one is universality, meaning that an MP represents the sovereign (the Nation) as a whole, instead of only voters in his/her constituency. The second one is independence, resulting not only in an unbinding character of potential instructions addressed to an MP by voters, but also in the impossibility of removal of Deputies and Senators by the electorate and in other legal guarantees, including parliamentary immunity[6].

Strict relation with the principle of a free parliamentary mandate does not mean that parliamentary immunity is considered a personal privilege of each Deputy and Senator. On the contrary, all constitutionally enacted forms of immunity are perceived as guarantees of proper functioning of the Sejm and the Senate. Legal protection of a parliamentarian is a consequence of legal protection of independence of parliament as a collegial representative body[7]. This view is consistently expressed in Polish constitutional jurisprudence. According to the opinion of the Polish Constitutional Tribunal, "the institution of parliamentary immunity guarantees the proper functioning of Parliament as an organ representing the nation. Parliamentary immunity may not be viewed as a subjective right vested in individual Members of Parliament, but rather as a privilege of the institution. There are no constitutional grounds for considering parliamentary immunity as a means for guaranteeing the legal immunity (*ergo* impunity) of Members of Parliament having infringed the law"[8]. In the same ruling the CT added that the scope of immunity, as well as principles of its waiving and suspending should be determined only with a view of protecting the chamber and its members from external intervention into parliamentary activity.

While perceived as guarantee of independence of parliament it is obvious that immunity *de facto* sets Deputies and Senators in a more favourable legal position than other citizens. As a result, all forms of parliamentary immunity have to be interpreted in the light of principle of equality set out in Article 32 of the Constitution. With regard to the protection of parliamentarians from criminal responsibility, the immunity (inviolability) has to be classified as an exception from a general rule that everyone may become a subject of criminal proceedings, held by prosecutors and independent courts[9]. As a result, all immunity provisions have to be interpreted with the use of rules on interpretation of exceptions. Even before entry into force of the current Constitution the Polish Supreme Courts had no objections to applying – to all immunities – a classical principle *exceptiones non sunt extendendae* (exceptions cannot be interpreted expansively), which caused an expression of a need of a strict interpretation of immunity rules[10]. Nevertheless, practical application of the guideline is sometimes problematic. As it is shown in later sections of this text, sometimes immunity rules are interpreted wider than it would flow from their literal interpretation.

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[6] J. Mordwiłko, Immunitet parlamentarny po jego dostosowaniu w roku 2003 do Konstytucji, in: Immunitet parlamentarny. Zagadnienia podstawowe, ed. W. Odrowąż-Sypniewski, Wydawnictwo Sejmowe, Warsaw 2007, p. 9.
[7] Z. Czeszejko-Sochacki, Prawo parlamentarne w Polsce, Wydawnictwo Sejmowe, Warsaw, 1999, p. 74.
[8] Judgement of the CT of 28th November 2001, K 36/01.
[9] M. Zubik, Immunitet parlamentarny a zawieszenie postępowania karnego, Państwo i Prawo 1998, monthly, vol. 7, p. 57.
[10] Resolution of the SC of 16th February 1994, I KZP 40/93.

2. MATERIAL IMMUNITY

KEY FINDINGS

- Material immunity, regulated in Article 105 para. 1 of the Constitution, protects MPs from legal accountability concerning activities performed within the scope of parliamentary mandate.
- With regard of such activities a parliamentarian can only be held accountable before the Sejm or, respectively, the Senate and, in case of an infringement of the rights of third parties, before a court upon consent of the relevant parliamentary chamber.
- Interpretation of expressions "activities performed within the scope of parliamentary mandate" and "the rights of third parties" has raised controversies in jurisprudence and among scholars.

2.1. General remarks

According to Article 105 para. 1 of the Constitution, *A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.* Article 108 of the Constitution extends the scope of application of the above rule to Senators.

Material immunity, which may – as already mentioned – be characterised as a privilege of "non-liability" was reintroduced into Polish constitutional law in 1992, in the so-called Small Constitution. The current shape of this immunity, determined in Article 105 para. 1 of the Constitution of 1997, is similar to the former one. This form of immunity protects any activity performed within the scope of a parliamentary mandate. Such activity, which normally would result in a legal accountability, ceases to be illegal and a Deputy or a Senator cannot be prosecuted[11]. However, there is no absolute exemption from any kind of liability. The Constitution states that regarding activities covered by the immunity, a Deputy can only be held accountable before the Sejm (with regard to Senators – before the Senate). Moreover, in a case where a parliamentarian has infringed the rights of third parties, a prosecution before court is admissible, provided that the Sejm (or respectively the Senate) grants its consent. The latter legal solution is sometimes called by Polish constitutional lawyers "a second formal immunity"[12], apart from the one guaranteed by Article 105 para. 2 of the Constitution.

The interpretation of Article 105 of the Constitution has raised controversies in jurisprudence and among scholars. The most problematic matter is a vague expression "activity performed within the scope of a Deputy's mandate".

2.2. Duration

Article 105 para. 1 of the Constitution states that a parliamentarian cannot be held accountable for an activity performed within the scope of a parliamentary mandate *during the term thereof nor after its completion.* Therefore a starting moment of immunity

[11] K. Grajewski, Immunitet parlamentarny w prawie polskim, Wydawnictwo Sejmowe, Warsaw 2001, p. 91, 92.
[12] K. Grajewski, Odpowiedzialność posłów i senatorów na tle zasady mandatu wolnego, Wolters Kluwer Polska, Warsaw 2009, p. 306.

protection is linked to the commencement of the mandate. Such a solution proved to be problematic since there is no a universally shared opinion with regard to the event that results in the start of the mandate. In fact, acquiring a legal status of an MP may be described as a process, since various rights and duties are gradually granted to parliamentarians. While beyond any doubt the day of election changes the legal status of a person who tries to obtain the parliamentary mandate, the so-called formal immunity (Article 105 para. 2 of the Constitution) is granted *from the day of announcement of the results of the elections*. Moreover, in the light of Article 104 para. 2 of the Constitution "the performance of the mandate" commences upon taking oath in the presence of the Sejm (or the Senate). Since this expression is in fact equivalent to the one used in Article 105 para. 1 of the Constitution (*activity performed within the scope of a Deputy's mandate*), it is fairly safe to say that material immunity starts to protect Deputies and Senators from the moment of taking the oath required by the Constitution, which usually takes place during the 1st sitting of the Sejm (or the Senate)[13].

An important feature of material immunity is "permanence", reflected in Article 105 para. 1 of the Constitution in a phrase "nor after its completion". It means that immunity protection lasts permanently, i.e. not only in the course of performing parliamentary mandate, but also after its completion. It also does not matter, whether the loss of the mandate occurred due to the end of term of office of the Sejm (or the Senate), or because of other reasons. Still the immunity protects only activities performed within the scope of parliamentary mandate, which implies that they had to be carried out in the time of holding the mandate. Therefore, trying to perform the same activities after a given person ceases to be a Deputy or a Senator would not be covered by the discussed form of immunity[14].

2.3. Scope of the immunity

2.3.1. The Constitution

At first glance, the scope of material immunity is well defined in Article 105 para. 1 of the Constitution. The protection is limited to *activities performed within the scope of a Deputy's mandate*, which clearly does not refer to all actions carried out in time of serving as a Deputy or a Senator, but only to such ones which are linked to the mandate, i.e. those whose performance by non-parliamentarians is generally not possible. The Constitution itself provides MPs with some exclusive competences, e.g. the right to stand for the post of the Marshal (a speaker) of the Sejm or the Senate (Article 110 para. 1) or – only with regard to Deputies – to submit interpellations to the Prime Minister or other members of the Council of Ministers (Article 115 para. 1). However creating a precise list of activities performed within the scope of parliamentary mandate is by far the most controversial matter when discussing material immunity, notwithstanding the fact that the AEMDS. i.e. an ordinary statute, contains a rule that was created in order to solve old controversies arising around the scope of the discussed immunity.

2.3.2. Activities mentioned in Article 6 of the AEMDS

Article 6 para. 1 of the AEMDS is very similar to the first sentence of Article 105 para. 1 of the Constitution, stating that *a Deputy or Senator shall not be held accountable for his activities falling within the scope of the exercise of his mandate during the period of such*

[13] L. Garlicki, Commentary to Article 105 of the Constitution, in: Konstytucja Rzeczypospolitej Polskiej. Komentarz, part 2, L Garlicki (ed.), Wydawnictwo Sejmowe, Warsaw 2001, p. 8.
[14] K. Grajewski (ed.), Komentarz do ustawy o wykonywaniu mandatu posła i senatora, Wydawnictwo Sejmowe, Warsaw 2014, p. 77.

mandate or after its expiry, subject to Article 6a. For such activities a Deputy or Senator shall be accountable only to the Sejm or the Senate. An important addition to the constitutional rule is para. 2 of that article, according to which *the activities, referred to in para. 1, shall include the moving of motions, delivery of speeches and voting at the sittings of the Sejm, Senate and National Assembly and their organs, at the sittings of the Sejm's, the Senate's or parliamentary clubs, groups and groupings, as well as other activities indispensably connected with the exercise of the mandate*. The list includes typical activities performed by MPs on the premises of the Sejm and the Senate. It should be pointed out that the National Assembly is a constitutional body comprised of all Deputies and Senators, possessing few (but still important) powers related to the President the Republic (e.g. declaring of the President's permanent incapacity to exercise his duties due to the state of his health, Article 130 para. 2 no. 4 of the Constitution).

The last phrase of Article 6 para. 2 of the AEMDS, *as other activities indispensably connected with the exercise of the mandate*, is deliberately vague. In consequence the list of activities covered by material immunity is an open one. In order to create a closed catalogue, it is necessary to analyse all legal rules determining legal status of a Deputy or a Senator.

2.3.3. Activities indispensably connected with the exercise of the mandate

Vagueness of the above statutory expression has resulted in strong controversies among constitutional lawyers and in court jurisprudence concerning its interpretation. The most important disputes took place in 1990s, shortly after material immunity was included in rules of the Small Constitution of 1992. There was no agreement whether the discussed form of immunity covers only actions performed by MP "in parliament" (such as voting, delivering speeches during plenary sittings, etc.) or also "extra-parliamentary" ones. This problem was clarified by the Supreme Court in 1994[15], which decided that material immunity refers "not only to Deputy's participation in sittings of the Sejm and its committees, but also his/her external activities (outside the Sejm), provided that they stay within limits of performing the function of a member of parliament". Although delivered before the adoption of the Constitution and the AEMDS, the cited opinion is still up-to-date. It is nowadays accepted by a vast majority of constitutional lawyers, especially due to a fact that it became a point of reference in later judgments of the SC, strictly referring to interpretation of Article 6 para. 2 of the AEMDS. The most often cited of newest SC opinions is the one delivered in 2007[16]. According to the Court's view, the statutory expression "other activities indispensably connected with the exercise of the mandate" should be interpreted as "all activities that directly result from the function of a parliamentarian and their relation to performing the mandate is unquestionable". Some scholars add that a core feature of activities covered by material immunity is their "uniqueness", i.e. law limits the possibility of their performance only to Deputies and Senators[17]. However, this point of view is controversial, as it stands in contradiction to some judgments of the SC. It will be discussed later, while analysing the problem of immunity protection of parliamentarians' activities in mass media.

In consequence of the above shown position of SC, a key step in determining whether a given activity is covered by material immunity according to Article 6 para. 2 of the AEMDS, is an attempt to match a given activity with any of the rights and duties of a parliamentarian guaranteed by law. Notwithstanding the already mentioned rights provided

[15] Resolution of the SC of 16th February 1994, I KZP 40/93.
[16] Judgement of the SC of 13th April 2007, I CSK 31/07.
[17] J. Mordwiłko, Immunitet…, p. 18.

in the Constitution (e.g. the right to submit interpellations to the Prime Minister and other members of the Council of Ministers), legal status of Deputies and Senators is primarily determined by the AEMDS, but not only by its Article 6. According to this statute, rights and duties of MPs can be divided into two groups : a) those executed "in the Sejm and Senate" (Articles 13-18 of the AEMDS) and b) "other rights and duties" (Articles 19-24 of the AEMDS). The former group includes, inter alia, a basic right (and a duty) to be *present and actively participate in the sittings of the Sejm or Senate, and the National Assembly, and also any of their organs to which they have been elected* (Article 13), specific rights of Deputies (Article 14) and Senators (Article 15) and the right to found clubs, groups or groupings (Article 17). The latter group encompasses, inter alia, the right to *obtain information and materials, and to inspect the activities of organs of State administration and local government*, etc. (Article 19), *the right to address an organ of governmental or local administration, a State-owned establishment or enterprise, social organization, as well as non-state economic entities, in order to consider a matter which he has submitted on his own behalf or on behalf of his constituent or constituents* (Article 20) and *the right to participate in sessions of the legislative assembly of a voivodeship, councils of districts and councils of communes, appropriate for the constituency for which he has been elected* (Article 22). Apart from the AEMDS some rights and duties of parliamentarians may be found in other legal acts. For instance, the Standing Orders of the Sejm state that only a Deputy may be designated by the Marshal of the Sejm as a Sejm's representative *in proceedings before the Constitutional Tribunal to adjudicate upon the conformity of a statute to constitutional provisions* (Article 121 para. 1 of the SO). Thus, while presenting in the CT the Sejm's position concerning constitutionality of a statutory rule, the Deputy is protected by material immunity.

In practice the most controversial problem is an extent of immunity protection of MPs activity in the media (interviews, press conferences). While some constitutional lawyers opt for denying immunity protection in such situations (since not only parliamentarians may be active in the media), the SC's position is more subtle and at the same time problematic. The Supreme Court sees a possibility of classifying "media activity" as being indispensably connected with the exercise of the mandate within the meaning of Article 6 para. 2 of the AEMDS, but only when such activity may be matched with Article 1 para. 2 of that act – i.e. with an obligation of Deputies and Senators to *inform their constituents about their work and the activities of the organ to which they have been elected*. However, it is usually hardly possible to determine whether a given opinion delivered by an MP in the media is an example of exercising "the duty to inform" (and in consequence covered by material immunity) or is simply a matter of a purely political activity. In some of its judgments the SC tried to examine if MP's opinion was based on information revealed in the course of Sejm's or Senate's work (e.g. during committee sittings)[18], but the already developed jurisprudence is far from being consistent.

A clear sign of controversies arising from the interpretation of Article 6 of the AEMDS is an application of the Commissioner for Citizens' Rights (an ombudsman) addressed to the Constitutional Tribunal, submitted on 3rd February 2014, concerning the conformity of Article 6 para. 2 of the AEMDS with Article 105 para. 1 of the Constitution. In the opinion of the CCR the statutory expression "activities indispensably connected with the exercise of the mandate" extends the scope of material immunity beyond constitutional limits. The problem is yet to be examined by the CT.

[18] For instance in a judgment of the SC of 29th October 2010, I CSK 651/09.

2.4. Accountability before the Sejm (the Senate)

As it was already mentioned, material immunity regulated in Article 105 para. 1 of the Constitution is not a typical "non-liability" form of parliamentary immunity. The reason for this is a constitutional reservation that regarding activities performed within the scope of a mandate, a Deputy or a Senator can only be held accountable before the Sejm or, respectively, the Senate. Neither the Constitution, nor the AEMDS (and other statutes) clarify the details concerning this type of legal accountability. Thus, it is necessary to examine internal parliamentary rules of procedure.

The Standing Orders of the Sejm do not contain any rules which would explicitly regulate the scope of Deputies' accountability before the Sejm concerning activities protected by material immunity. Despite it the SO envisage specific types of legal accountability, which in fact are related to at least some of such activities. Part I chapter 4 of the SO, entitled "Principles of a Deputy's Responsibility in Relation to the Rules" regulates procedures related to sanctioning: a) breach or failure to perform the duties specified in Articles 33–35 of the AEMDS (which inter alia concern lodging Deputies' statements relating to their financial status), b) non-performance of other duties of a Deputy, c) misbehaviour during plenary sittings of the Sejm (including cases when a Deputy is expelled from a sitting), d) unjustified absence from a sitting of the Sejm or failure to participate in certain number of votes. It should be added that procedures marked as c) and d) include the possibility of imposing financial sanctions on Deputies. Apart from the above-mentioned forms of legal responsibility, Part II chapter 13 of the SO contains a procedure concerning decisions of the Deputies' Ethics Committee in cases of Deputies "who conduct themselves in a manner inconsistent with the dignity of a Deputy". The Committee issues its decision basing on the "Principles of Deputies' Ethics" adopted by the Sejm in 1998. Sanctions imposed within the context of this type of responsibility are in fact "symbolic". The Deputies' Ethics Committee may "reproach", "admonish" or "reprimand" a Deputy.

The Rules and Regulations of the Senate envisage generally the same forms of legal accountability of Senators as the Standing Orders of the Sejm concerning Deputies. However, since the Senate has not adopted an ethical code, the Rules, Ethics and Senatorial Affairs Committee does not possess any legal guidelines when deciding cases concerning Senators "who act in a manner unbecoming the Senator's dignity".

2.5. Exceptional accountability before courts

As it was already mentioned, the second sentence of Article 105 para. 1 of the Constitution contains an important exception to the principle of non-liability of MPs concerning activities protected by material immunity. In case a Deputy's or Senator's activity performed within the scope parliamentary mandate "has infringed the rights of third parties", the MP "may only be proceeded against before a court with the consent of the Sejm" (or the Senate respectively).

An earlier regulation of material immunity – Article 7 para. 1 of the Small Constitution of 1992 limited the possibility of court accountability of MPs acting within the scope of their mandate to cases of infringement of personal rights, which constituted a clear reference to Article 23 of the Civil Code of 23rd April 1964[19]. According to this provision, *the personal rights of a human being, in particular health, freedom, dignity, freedom of conscience, name or pseudonym, image, privacy of correspondence, inviolability of home, and*

[19] Consolidated text in Dziennik Ustaw of 2014, item 121 with amendments.

scientific, artistic, inventive or improvement achievements are protected by civil law, independently of protection under other regulations[20].

Inclusion of the phrase "the rights of third parties" in Article 105 para. 1 of the Constitution is considered as an extension of the discussed exception to the "non-liability" character of material immunity, since that phrase refers to all potential rights[21]. In practice applications for Sejm's or Senate's consent for imposing court accountability on Deputies or Senators refer to the above-mentioned protection of personal rights, i.e. to a civil law institution. Still it would be admissible to apply for such consent in all cases when MPs infringe "rights of third parties", e.g. when such infringements would be classified as offences against honour and personal inviolability, especially as a criminal defamation regulated in Article 212 of the Penal Code of 6th June 1997[22].

The procedure for lifting immunity based on Article 105 para. 1 sentence 2 of the Constitution is discussed in section 6.

[20] Translation taken from Legalis, an Online Legal Information System, CH Beck, http://www.legalis.pl/.
[21] M. Zubik, Immunitet parlamentarny w nowej Konstytucji RP, Państwo i Prawo 1997, monthly, vol. 9, p. 21.
[22] Dziennik Ustaw of 1997, no. 88, item 553 with amendments.

3. FORMAL IMMUNITY

KEY FINDINGS

- Formal immunity protects Deputies and Senators from being brought to criminal accountability concerning any activities performed from the day of an official announcement of results of elections until the day of the expiry of parliamentary mandate.
- Criminal accountability is admissible only upon consent of the Sejm or the Senate, unless an MP grants consent to initiate criminal proceedings against himself/herself.
- The term "criminal accountability" is not interpreted in a strict way, thus comprising criminal accountability in a strict sense, fiscal criminal accountability, penal administrative measures and responsibility for misdemeanours.

3.1. General remarks

According to Article 105 para. 2 of the Constitution *from the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm*. Article 108 of the Constitution extends the scope of application of the above rule to Senators.

The form of parliamentary immunity provided in the above-cited constitutional rule, commonly called a formal immunity, may be classified as a typical privilege of inviolability of a parliamentarian. In contrary to immunity guaranteed in Article 105 para. 1 of the Constitution formal immunity grants MPs a "complete" protection, since it covers all activities, and is not limited to those which are performed within the scope of a parliamentary mandate[23]. On the other hand, it is limited to a precise period of time and can always be waived, of course unless a Deputy or a Senator grants his/her consent to be subjected to criminal accountability (Article 105 para. 4 of the Constitution).

According to a unanimous opinion of Polish constitutional lawyers, formal immunity is a procedural privilege[24]. The prohibition to bring an MP to criminal accountability, which is a core element of formal immunity, constitutes a the so-called negative procedural condition. It means that until the immunity is lifted or a parliamentarian grants consent within the meaning of Article 105 para. 4 of the Constitution, no criminal court proceedings against an MP are admissible. However, activity committed by the MP in a given situation is considered a criminal offense. This feature differentiates formal immunity and material one. As already mentioned, the latter results in "declassifying" a given activity as illegal.

3.2. Duration

Article 105 para. 2 of the Constitution states that formal immunity protects parliamentarians from the day of announcement of the results of the elections until the day of the expiry of mandate. Some lawyers claim that the duration of the discussed form of immunity protection matches the duration of performance of parliamentary mandate, but such an opinion is groundless. As it was already mentioned in section 2.2, it may be deduced from Article 104 para. 2 of the Constitution that the performance of the mandate

[23] A. Preisner (ed.), Słownik wiedzy o Sejmie, Wydawnictwo Sejmowe, Warsaw 2001, p. 44.
[24] I. Joanna-Biństa, Legislative Branch, in: Constitutional Law in Poland, B. Banaszak and others, Kluwer Law International BV, Alphen aan den Rijn 2012, p. 133.

commences upon taking oath in the presence of the Sejm or (the Senate), which as a rule takes place during the first sitting of the Sejm (or the Senate). Announcement of the results of the elections takes place much earlier, immediately after the final results are determined by the National Electoral Committee. Thus MPs are protected by formal immunity on a quite early stage – on the day of official declaring them elected. With regard to parliamentarians taking office in the course of term of the Sejm of the Senate, immunity protection starts on the day of official announcement of decision of the Marshal of the Sejm concerning the filling of a vacant seat in the Sejm or on the day of official announcement of results of by-elections to the Senate.

The end of immunity protection is clearly mentioned in Article 105 para. 2 of the Constitution – "the expiry of mandate". This matter has not raised any controversies among constitutional lawyers. It is obvious that a standard cause of expiry of parliamentary mandate is the end of term of the Sejm or the Senate (provided that an MP has not been re-elected). Other reasons are e.g. the resignation from the seat, the loss of the right to be elected, the forfeiture of the mandate by a valid judgment of the Tribunal of State or the appointment, during the term of office, to any office or assignment of any function which, pursuant to the provisions of the Constitution of the Republic of Poland or statute, may not be held jointly with parliamentary mandate.

In consequence of current shape of Article 105 para. 2 of the Constitution and of its Article 98 para. 1 for a short period of time (from the day of announcement of the results of the elections until the day preceding the assembly of the Sejm of the succeeding term of office – when the term of the "old" Sejm and Senate ends) formal immunity protects both "old" and newly elected Deputies and Senators).

3.3. Scope of the immunity

At first glance, the scope of formal immunity is clearly defined in Article 105 para. 2 of the Constitution. It protects MPs from criminal accountability without the consent of the Sejm. Nevertheless, the constitutional expression "criminal accountability" has to be interpreted regardless of the interpretation of an equivalent statutory expression. Thus, the scope of criminal accountability defined in statutes, above all in the Criminal Code of 6th June 1997[25], does not reflect the whole range of formal immunity. It is widely accepted that the Constitution guarantees immunity protection of MPs concerning, generally speaking, all common (i.e. potentially applicable to all citizens) punitive measures[26]. Thus, it includes criminal accountability in a strict statutory sense, fiscal criminal accountability, penal administrative measures and responsibility for misdemeanours[27]. Outside of the scope of immunity protection are various types of professional responsibility (e.g. disciplinary measures applicable to MPs who are members of the bar or a corporation of legal counsellors), all civil law measures and other specific types of legal responsibility. For instance, as court jurisprudence confirms, an MP is obliged to pay additional fees imposed by local government for failing to obtain a parking ticket[28].

It should be added that formal immunity does not allow MPs to "escape" from criminal accountability. According to Article 7a of the AEMDS the limitation period in respect of the prosecution before a criminal court for acts covered by immunity shall not run during the period of enjoyment of the immunity.

[25] Dziennik Ustaw of 1997, no. 88, item 553 with amendments.
[26] There are however few different opinions, according to which formal immunity should be limited to a strictly defined criminal accountability, e.g. A. Bień-Kacała, J. Galster, Glosa do wyroku TK z dnia 28 listopada 2001 r., K. 36/01, Kwartalnik Prawa Publicznego 2001, monthly, vol. 4.
[27] J. Mordwiłko, Wykładnia art. 105 ust. 3 i 4 Konstytucji regulującego niektóre aspekty immunitetu parlamentarnego, in: Status posła. Część I, Studia Biura Analiz Sejmowych 2007, quarterly, vol. 1, p. 191, 192.

4. PROTECTION FROM DETENTION AND ARREST

KEY FINDINGS

- As a rule a Deputy or a Senator can be neither detained, nor arrested without a consent of the Sejm or the Senate.
- The term "detention" is interpreted widely, comprising all legal forms of deprivation and limitation of personal liberty of the Deputy or a Senator by law enforcement organs.
- The Constitution exceptionally allows for detention of a parliamentarian, provided that two conditions are jointly fulfilled: the MP is apprehended *in flagrante delicto* and the detention is necessary for securing the proper course of proceedings. Even in such cases a president of the respective chamber may order an immediate release of the MP.

4.1. General remarks

According to Article 105 para. 5 of the Constitution *a Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy*. Article 108 of the Constitution extends the scope of application of the above rule to Senators.

The privilege guaranteed in the above-cited constitutional rule is a typical form of inviolability of a parliamentarian, known in constitutionalism since the time of the French Revolution[29]. It is considered as a standard addition to formal immunity, currently regulated in Article 105 para. 2 of the Constitution. Polish scholars tend to consider both privileges as one, especially due to the fact that in an earlier version of the AEMDS they were regulated by the same article. Currently theoretical opinions vary, but a close link between formal immunity and protection from detention and arrest of MP is unquestionable[30].

4.2. Duration

Article 105 para. 5 of the Constitution indicates neither the beginning, nor the ending moments of the discussed form of protection of MPs. It is only stated that subject of protection is a Deputy (or a Senator), which implies that the period of application of Article 105 para. 5 of the Constitution reflects the time of possessing parliamentary mandate. Despite that vague constitutional rule Polish constitutional lawyers agree that since the protection from detention and arrest is closely linked to formal immunity, the duration of both forms of immunity protection is the same. Thus MPs are covered by both privileges from the day of announcement of the results of the elections until the day of the expiry of mandate (see also section 3.3).

4.3. Scope of the privilege

Literal interpretation of the Constitution leads to a conclusion that only two measures – detention and arrest – cannot by applied to Deputies and Senators in the same way as to

[28] Judgement of the Regional Administrative Court in Cracow of 29th October 2012, III SA/Kr 1167/11.
[29] B. Banaszak, Porównawcze prawo konstytucyjne współczesnych państw demokratycznych, Wolters Kluwer Polska, Warsaw 2007, p. 388.
[30] B. Janusz-Pohl, Immunitety w polskim postępowaniu karnym, Wolters Kluwer Polska, Warsaw 2009, p. 113, 114.

other citizens. However, despite a general tendency to a narrow interpretation of the scope of all forms of immunity, traditionally both expressions used in Article 105 para. 5 of the Constitution are interpreted quite widely. As early as in 1991 the CT stated that the constitutional term "arrest" encompasses "all forms of deprivation of liberty, even temporary ones, executed by any of state authorities"[31]. Currently, since the Constitution of 1997 mentions not only arrest, but also detention, the latter term is used as a base of a broad interpretation of the discussed privilege. An obvious evidence of that fact is Article 10 para. 2 of the AEMDS, stating that the prohibition against detention *shall include all the forms of deprivation and limitation of personal liberty of the Deputy or a Senator by law enforcement organs*. Scholars do no entirely agree about the list of such forms, but it is uncontroversial to include the following measures: detention (Article 243 of the Code of Criminal Procedure of 6th June 1997[32]), detention and compulsory bringing a person (Article 247 of the CCP), search of a person (Article 223 of the CCP) and a preventive measure of placing a person in a psychiatric institution (Article 93a para. 1 no. 4 of the Criminal Code)[33].

According to Article 10 para. 8 of the AEMDS the requirement to obtain consent of the Sejm or the Senate does not include cases of enforcement of a penalty of deprivation of liberty (i.e. imprisonment) imposed by a valid judgment of the court. This rule is an obvious consequence of that fact that before issuing a court judgment an MP's formal immunity has to be lifted. Thus it is not necessary to apply to the Sejm or the Senate for a separate consent to execute the judgment.

4.4. Exceptional possibility of detaining a parliamentarian

Article 105 para. 5 of the Constitution allows to detain an MP without the consent of the Sejm (or the Senate), provided that two conditions are jointly satisfied. Firstly, a parliamentarian has to be *apprehended in the commission of an offence*, i.e. "in flagrante delicto". It should be added that according to Article 243 para. 1 of the CCP *everyone is entitled to detain a person in the act of committing an offence or in pursuit undertaken directly after the offence was committed, if there is a risk of that the offender might go into hiding or when it is not possible to establish his identity*. However, the arrested person should be immediately surrendered to the Police (Article 243 para. 2 of the CCP).

Secondly, the detention has to be *necessary for securing the proper course of proceedings*. This phrase is an indirect reference to prerequisites of imposing preventive measures included in the Code of Criminal Procedure[34]. According to Article 249 para. 1 sentence 1 of the CCP such measures may *be ordered in order to ensure the correct course of proceedings and, exceptionally, in order to prevent the accused from committing a new serious offence*. An exceptional detention of a Deputy or a Senator without the consent of the Sejm or the Senate may take place especially when there is a high probability that the MP who was apprehended while committing an offence would perform activities aimed at impeding criminal procedures, e.g. trying to encourage witnessed to give false evidence.

As it is clearly mentioned in the Constitution even in case of meeting both above conditions the Marshal of the Sejm (or the Marshal of the Senate) may order an immediate release of a Deputy (a Senator). Both Article 105 para. 5 of the Constitution and Article 10 para. 3 of the AEMDS require that any exceptional detention of an MP be immediately communicated respectively to the Marshal of the Sejm or the Marshal of the Senate.

[31] Judgement of the CT of 28th January 1991, K 13/90.
[32] Dziennik Ustaw of 1997, no. 89, item 555 with amendments.
[33] P. Mikuli, M. Żurek, Glosa do wyroku TK z dnia 28 listopada 2001 r., K. 36/01, Przegląd Sądowy 2002, monthly, vol. 6, p. 131.
[34] K. Grajewski (ed.), Komentarz…, p. 152.

5. SUSPENSION OF CRIMINAL PROCEEDINGS

KEY FINDINGS

- The Constitution entitles the Sejm and the Senate to request a suspension of criminal proceedings instituted against a person before the day of his election as Deputy or Senator.
- The suspension is temporal, ending immediately after expiry of the parliamentary mandate. Thus this form of immunity does not allow MPs to "escape from justice".

5.1. General remarks

According to Article 105 para. 3 of the Constitution *criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time*. Article 108 of the Constitution extends the scope of application of the above rule to Senators.

This form of immunity privilege is a novelty, since it was introduced for the first time into Polish constitutional law in the Constitution of 1997. All scholars agree that it is even closer related to formal immunity (Article 105 para. 2 of the Constitution) than the protection from detention and arrest (Article 105 para. 5 of the Constitution). The reasons of its inclusion in parliamentary law were well described by the CT in the judgment of 28th November 2001, K 36/01: "since (…) institution of proceedings took place before the acquisition of the mandate, there is no possibility of harassing or blackmailing a parliamentarian with the use of a threat of bringing him to criminal accountability, because proceedings are already underway. In case of a threat of abusing the proceedings for political purposes the chamber may always request suspension of these proceedings".

5.2. Scope of the privilege

A basic condition for application of Article 105 para. 3 of the Constitution is that institution of criminal proceedings has to take place before a given person is elected as a Deputy or a Senator. The expression "the day of election" is interpreted as a day of an official announcement of results of elections, which reflects the starting moment of covering MPs with formal immunity[35]. Also the term "criminal proceedings" is interpreted in the same way, in the case of formal immunity (see section 3.3). It is worth mentioning that such proceedings have to be strictly indicated in the course of applying Article 105 para. 3 of the Constitution. It means that the Sejm and the Senate cannot generally request the suspension of all possible criminal proceedings against an MP.

As it is clearly mentioned in the Constitution, suspicion of criminal proceedings on the request of the Sejm or the Senate is temporal, ending immediately after parliamentary mandate expires. An extension of the statute of limitation, provided in Article 105 para. 3 of the Constitution is an obvious legal solution, because it does not allow MPs to "escape from justice". As it was mentioned earlier, a similar rule applies to offences performed by parliamentarian during the time of holding the mandate, i.e. in the period covered by formal immunity.

It should be added that according to Article 9 para. 10 of the AEMDS a Deputy or Senator may make a statement to the Marshal of the Sejm or the Marshal of the Senate in which

[35] B. Banaszak, Konstytucja Rzeczypospolitej Polskiej. Komentarz, C.H. Beck, Warsaw 2012, p. 624, 625.

he/she declares not to submit an application for Sejm's (Senate's) request for suspension of criminal proceedings against him/her. However the AEMDS does not prohibit a withdrawal of such a statement.

6. IMMUNITY PROCEDURES

KEY FINDINGS

- Polish parliamentary law provides three types of procedures aimed at waiving parliamentary immunity. All of them share the same procedural scheme, comprising the following states: formal verification of a motion to waive immunity by the Marshal of the Sejm or the Marshal of the Senate, consideration of the motion by an appropriate committee and a very limited plenary debate ending with a vote on that motion. Also in all situations waiving immunity requires support of an absolute majority of the statutory number of Deputies or Senators.
- The most important peculiarity concerns the procedure to waive of formal immunity, because a given parliamentarian may decide not to enjoy this type of immunity protection. In such a case the respective parliamentary chamber is bound by an MP's decision.
- Apart from waiving immunity the Constitution provides a narrow possibility to defend immunity by the Sejm or the Senate, allowing for request – by means of a resolution adopted by a three-fifths majority vote of the statutory number of Deputies or Senators – to suspend criminal proceedings instituted against a person before the day of his election as an MP.
- In practice most immunity cases concern waiving formal immunity. Recently the number of them has increased considerably, but the subject matter is in almost all of the cases the same – "driving misdemeanours" committed by MPs. This problem seems to be solved by a recent amendment of the AEMDS adopted on 11th July 2015.
- Both the Sejm and the Senate are quite reluctant to waiving immunities of their members. An analysis of parliamentary practice indicates that as a rule the outcome of vote on waiver of immunity does not depend on a political affiliation of a Deputy or a Senator.

6.1. Waiver of immunity

6.1.1. Application of waiver of immunity

As it flows from earlier parts of this text, not all immunity privileges can be waived. An exception is the basic form of material immunity (i.e. the privilege of non-liability), regulated in Article 105 para. 1 of the Constitution. In consequence waiving concerns the following situations: a) bringing an MP to court in case of infringement of the rights of third parties while performing activities within the scope of parliamentary mandate (Article 105 para. 1 sentence 2 of the Constitution), b) bringing the MP to criminal accountability (Article 105 para. 2 of the Constitution), c) detaining or arresting the MP (Article 105 para. 5 of the Constitution).

6.1.2. Model procedure

All procedures of waiver regarding various forms of immunity are regulated in detail in the AEMDS and, to an extent, in the Standing Orders of the Sejm and in the Rules and Regulations of the Senate. They have been created according to the same model, encompassing three key procedural stages.

Firstly, a motion concerning waiver of immunity is formally verified by the Marshal of the Sejm (or the Marshal of the Senate). The competence to do so is not explicitly mentioned in the AEMDS. Nevertheless, since the statute obliges the respective marshal to refer the motion to a competent committee (Article 7c para. 1) and, in the same time, lists necessary formal components of the motion (Article 7b para. 4), the right of a formal verification seems uncontroversial[36]. The committee and the plenary are not bound by results of that verification. Thus on each stage of the procedure it is possible to invoke formal defects of the motion and to request the marshal to return the motion to the applicant in order to eliminate the defects.

In the second stage of the procedure, the motion is examined by a relevant committee, i.e. the Rules and Deputies' Affairs Committee of the Sejm or the Rules, Ethics and Senatorial Affairs Committee of the Senate. The AEMDS and parliamentary rules of procedure set out only general procedural framework concerning committees' deliberation on the motion, thus allowing a high degree of freedom of decision to committees themselves. According to Article 7c para. 3 od the AEMDS at the request of a respective *committee the court or a competent authority before which the proceedings against the Deputy or Senator is held, shall make accessible the files of the case*. The MP to whom the motion concerns, may present to the committee explanations and his own remarks on this issue, in the written or oral form (Article 7c para. 4 of the AEMDS). Moreover the Standing Orders of the Sejm provide the Deputy against whom the motion has been moved with a possibility of appointing *a counsel for his defence from amongst the Deputies* (Article 136 of the SO). Surprisingly, a similar rule has not been included in the Rules and Regulations of the Senate.

Committee's deliberations concerning the motion to waive immunity ends with adoption of a report and the proposal of acceptance or rejection of the motion (Article 7c para. 5 of the AEMDS). It starts the final (third) stage of procedure, i.e. a plenary debate and vote on the motion. According to Article 7c para. 6 of the AEMDS, *the Sejm or the Senate shall grant consent for the prosecution of a Deputy or Senator before a criminal court, by means of a resolution adopted by an absolute majority vote of the statutory number of Deputies or Senators*, i.e. 231 out of 460 Deputies and 51 out of 100 Senators. The same article states that *any failure to obtain the required majority of votes shall mean an adoption of a resolution not to grant consent for the prosecution of a Deputy or Senator before a criminal court*. It is worth to add that according to Article 133 para. 6 of the SO the right to speak during the Sejm's consideration of the motion is limited to a Rapporteur of the Rules and Deputies' Affairs Committee and a Deputy against whom the motion has been moved. The Rules and Regulations of the Senate include a slightly different solution, stating that: the Senate considers the report of the Rules, Ethics and Senatorial Affairs Committee without holding a discussion. The Senator concerned by the motion has an opportunity to provide explanations and other Senators are entitled to question him on the issue at hand (Article 26 para. 2 of the RR).

Apart from three almost identical procedural stages all types of procedures concerning waiver of immunity include other similarities. As a rule motions to waive the immunity have

[36] J. Mordwiłko, Immunitet…, p. 13.

to be lodged through the agency the Public Prosecutor General – with an exception of motions for granting consent for the prosecution of a Deputy or Senator before a criminal court for the commission of an offence under private prosecution or for granting consent to prosecute a Deputy or Senator before a civil court. In those cases a private prosecutor (or a plaintiff with regard to civil law actions) acts as a sponsor of the motion (having submitted the case to the court – Article 7b paras. 2 and 5 of the AEMDS). Another similarity concerns a necessary content of a motion. All types of procedure of waiver of immunity include rules obliging a sponsor of the motion to specify his/her identity, the first name and surname of a Deputy or Senator (to whom the motion concerns and the date and place of his birth, legal basis for the motion, as well as a precise description of the act to which the motion concerns.

6.1.3. Specific procedural solutions

The most important peculiarity concerning procedures for waiver of immunity is a possibility of Deputy's or Senator's consent to be brought to criminal accountability (with regard to formal immunity), provided for by Article 105 para. 4 of the Constitution. This matter is discussed in the next section of this text. Apart from this issue, differences among procedures are of secondary importance. For instance, as was already mentioned, in some cases a private person (acting as a private prosecutor or a plaintiff) is allowed to lodge a motion for waiver of immunity. Another peculiarity which is worth to mention, concerns a motion for the consent for detaining or arresting a Deputy or a Senator. According to Article 10 para. 5 no. 5 of the AEMDS a sponsor of the motion is, inter alia, obliged to specify *reasons, pointing out, in particular, the necessity of application of a given measure*.

6.2. Consent to being brought to criminal accountability

An important – and unique when compared to other democratic states – feature of Polish solution concerning parliamentarians' renouncement of their immunity is that the Sejm or the Senate are bound by MP's decision to resign from immunity protection. This peculiarity has been criticized by a prevailing part of constitutional lawyers[37], but so far no amendments of the Constitution concerning that matter have been proposed. It should be added that a Deputy's or Senator's statement in which he/she consents to be brought to criminal accountability should be delivered upon a thorough consideration. Article 8 para. 8 of the AEMDS states that withdrawal of such consent *shall have no legal effect*.

The second, already mentioned, characteristic of resignation from immunity is its strict constitutional limitation to formal immunity, i.e. cases on bringing a parliamentarian to criminal accountability for activities which have not been performed within the scope of parliamentary mandate. As a result it is not possible to submit such a consent in cases of motions regarding detention or arrest, or bringing an MP to court in case of infringement of the rights of third parties while performing activities within the scope of parliamentary mandate. In these situations the Sejm or the Senate have to vote on motions, irrespective of MP's will not to enjoy immunity protection.

A detailed procedure implementing Article 105 para. 4 of the Constitution is regulated in Article 8 of the AEMDS. The consent may be granted after a formal verification of a motion for waiver of immunity by the Marshal of the Sejm or the Marshal of the Senate. The respective marshal sets the time limit for making the MP's statement regarding the consent (Article 8 para. 1 of the AEMDS). The statement has to be submitted in writing to the

[37] B. Banaszak, Konstytucja…, p. 626, 627.

Marshal of the Sejm or the Marshal of the Senate who then applies to an appropriate committee to examine the formal correctness of the statement (Article 8 para. 3 of the AEMDS). Its aim is to determine whether the statement is sufficiently precise, so that the MP's activity to which it concerns, doesn't raise any doubts. According to Article 8 para. 4 of the AEMDS: *the Marshal of the Sejm or the Marshal of the Senate may oblige a Deputy or a Senator to make the text of the statement more specific within a specified time-limit. Any failure to make the text of the statement more specific shall cause the statement not to be proceeded*.

It should be added that prosecution before a criminal court may take place only in respect of an act indicated in the motion, in respect of which the Deputy or Senator has given his consent. In the event that the consent regards only some of the acts indicated in the motion, the remaining part of application has to be considered by the Sejm or the Senate according to a standard procedure (Article 8 paras. 5 and 6 of the AEMDS).

As a result of a large number of motions for waiver of immunity concerning misdemeanours committed by parliamentarians while driving a vehicle (see section 6.4), an important modification of the procedure regarding the consent to be brought to criminal accountability was adopted on 10th July 2015, in an act which inter alia amended the AEMDS. According to a new Article 10b para. 2 of the AEMDS, entering into force of 19th September 2015, in case of a Deputy or Senator who commits any of misdemeanours regulated in Chapter 11 of the Code of Misdemeanours of 20th May 1971[38], entitled "Misdemeanours Against Safety and Order in Transport", accepts a ticket or pays a fine is deemed to have expressed his/her consent to be brought to legal accountability concerning this misdemeanour. Therefore, no parliamentary procedures for waiver of immunity have to be initiated.

6.3. Procedure for requesting suspension of criminal proceedings instituted against an MP

The possibility of Sejm's or Senate's request regarding suspension of criminal proceedings instituted against an MP, provided in Article 105 para. 3 of the Constitution, is the only solution related to Polish parliamentary immunity which may be considered a defence of immunity. It flows from the fact that without such a request the proceedings may continue without any hindrance.

According to Article 9 para. 3 of the AEMDS a right to apply that the Sejm or the Senate demand that the prosecution before a criminal court be suspended until the expiry of the mandate is vested solely in a given Deputy or Senator. The application has to be submitted to a respective marshal, who, after a formal verification of the application, refers it to an appropriate committee (the Rules and Deputies' Affairs Committee of the Sejm or the Rules, Ethics and Senatorial Affairs Committee of the Senate). Article 9 para. 9 of the AEMDS states that the Sejm or the Senate demands the suspension of the prosecution before a criminal court, by means of a resolution adopted by a three-fifths majority vote of the statutory number of Deputies or Senators, i.e. 276 out of 460 Deputies or 60 out of 100 Senators.

[38] Consolidated text in Dziennik Ustaw of 2013, item 482 with amendments.

6.4. Parliamentary practice

In practice a prevailing number of immunity cases initiated in the Sejm and in the Senate concerns formal immunity, i.e. bringing MPs to a widely interpreted criminal accountability for activities which have been performed beyond the scope of parliamentary mandate. In the course of the current term (which commenced in 2011) the number of such cases considerably increased, which may be illustrated by the change in the number of statements, in which parliamentarians expressed their consent to be brought to criminal accountability. While during the previous term 16 such statements have been lodged (14 by Deputies, 2 by Senators), statistics concerning the current one indicate 114 statements (103 submitted by Deputies, 11 by Senators). A vast majority of them concerns misdemeanours committed by MPs while driving a car, above all speeding. The reason of this phenomenon is a current government policy aimed at increasing safety on roads, which inter alia resulted in an installation of a large number of speed cameras. All these circumstances influenced an amendment of the AEMDS adopted on 11th July 2015, which, as already mentioned, allowed parliamentarians to accept tickets and pay fine imposed as a consequence of committing such misdemeanours (see section 6.2). Thus the number of motions to waive a formal immunity is likely to decrease in the nearest future.

Apart from cases on "driving misdemeanours", immunity proceedings initiated in the Sejm and in the Senate are not numerous. Statistics show that between 2001 and 2015 the Sejm adopted about 50 resolutions concerning consent to bringing Deputies to criminal accountability, 12 – to civil law accountability (on the basis of Article 105 para. 1 sentence 2 of the Constitution) and only 5 – to detainment or arrest of a Deputy. In the same period the Senate adopted 10 resolutions regarding criminal accountability, 1 – civil law one and none regarding detainment or arrest of a Senator. It is important to mention that both houses are quite reluctant to waiving immunities of their members. All resolutions adopted by the Senate in the course of last 4 terms were negative, i.e. no consent was granted. As to the Sejm, the data differs, but still in about 2/3 of all cases immunity has not been waived. An analysis of Sejm's practice leads to a conclusion that, in general, the outcome of voting on waiver of immunity does not depend on a political affiliation of a Deputy. Thus it would be justified to say that the Sejm as a rule perceives immunity of its members as guarantee of the free parliamentary mandate, not as a tool used in day-to-day confrontation between governing majority and opposition.

Cases related to parliamentary immunity which gained particular public attention occurred in the course of the 4th term of the Sejm (2001-2005) and the 5th one (2005-2007). In 2004, the Sejm consented to detain and arrest a Deputy who had been accused of various corruptive practices. It is worth noting that the Deputy was finally (long after his mandate expired) found guilty of charge and sentenced to imprisonment. In 2007, shortly before the end of the term, the Sejm consented to detain and arrest, as well as – in a separate resolution – to bring to criminal accountability a Deputy charged with various crimes, including sexual harassment, rape and incitement to kidnaping. Also in this case the Deputy was convicted and sentenced to imprisonment.

So far none of Deputies and Senators applied to the Sejm or to the Senate for requesting suspension of criminal proceedings. Therefore, the immunity privilege granted in Article 105 para. 3 of the Constitution is of no practical importance.

REFERENCES

BOOKS, ARTICLES, REPORTS

- B. Banaszak, Konstytucja Rzeczypospolitej Polskiej. Komentarz, C.H. Beck, Warsaw 2012.
- B. Banaszak, Porównawcze prawo konstytucyjne współczesnych państw demokratycznych, Wolters Kluwer Polska, Warsaw 2007.
- A. Bień-Kacała, J. Galster, Glosa do wyroku TK z dnia 28 listopada 2001 r., K. 36/01, Kwartalnik Prawa Publicznego 2001, monthly, vol. 4.
- Z. Czeszejko-Sochacki, Prawo parlamentarne w Polsce, Wydawnictwo Sejmowe, Warsaw, 1999.
- L. Garlicki, Commentary to Article 105 of the Constitution, in: Konstytucja Rzeczypospolitej Polskiej. Komentarz, part 2, L Garlicki (ed.), Wydawnictwo Sejmowe, Warsaw 2001.
- E. Gierach, P. Chybalski (ed.), Polish Constitutional Law. The Constitution and Selected Statutory Materials, Wydawnictwo Sejmowe, Warsaw 2009
- K. Grajewski, Immunitet parlamentarny w prawie polskim, Wydawnictwo Sejmowe, Warsaw 2001.
- K. Grajewski (ed.), Komentarz do ustawy o wykonywaniu mandatu posła i senatora, Wydawnictwo Sejmowe, Warsaw 2014.
- K. Grajewski, Odpowiedzialność posłów i senatorów na tle zasady mandatu wolnego, Wolters Kluwer Polska, Warsaw 2009.
- B. Janusz-Pohl, Immunitety w polskim postępowaniu karnym, Wolters Kluwer Polska, Warsaw 2009.
- I. Joanna-Biśta, Legislative Branch, in: Constitutional Law in Poland, R. Blanpain (ed.), Kluwer Law International BV, Alphen aan den Rijn 2012.
- P. Mikuli, M. Żurek, Glosa do wyroku TK z dnia 28 listopada 2001 r., K. 36/01, Przegląd Sądowy 2002, monthly, vol. 6, p. 131.
- J. Mordwiłko, Immunitet parlamentarny po jego dostosowaniu w roku 2003 do Konstytucji, in: Immunitet parlamentarny. Zagadnienia podstawowe, ed. W. Odrowąż-Sypniewski, Wydawnictwo Sejmowe, Warsaw 2007.
- J. Mordwiłko, Wykładnia art. 105 ust. 3 i 4 Konstytucji regulującego niektóre aspekty immunitetu parlamentarnego, in: Status posła. Część I, Studia Biura Analiz Sejmowych 2007, quarterly, vol. 1.
- A. Preisner (ed.), Słownik wiedzy o Sejmie, Wydawnictwo Sejmowe, Warsaw 2001.

- Report on the scope and lifting of parliamentary immunities, European Commission for Democracy through Law (Venice Commission), 23rd August 2015, *http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)011-e*.

- M. Zubik, Immunitet parlamentarny a zawieszenie postępowania karnego, Państwo i Prawo 1998, monthly, vol. 7.

- M. Zubik, Immunitet parlamentarny w nowej Konstytucji RP, Państwo i Prawo 1997, monthly, vol. 9.

CASE-LAW

- Judgement of the CT of 28th January 1991, K 13/90.

- Judgement of the CT of 28th November 2001, K 36/01.

- Judgement of the Regional Administrative Court in Cracow of 29th October 2012, III SA/Kr 1167/11.

- Judgement of the SC of 13th April 2007, I CSK 31/07.

- Judgment of the SC of 29th October 2010, I CSK 651/09.

- Resolution of the SC of 16th February 1994, I KZP 40/93.

ANNEX – SOURCES OF LAW

THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2ND APRIL 1997

Article 105

1. A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.

2. From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.

3. Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.

4. A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paras. 2 and 3 shall not apply.

5. A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.

6. Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute.

Article 108

The provisions of Articles 103-107 shall apply, as appropriate, to Senators.

THE ACT OF 9TH MAY 1996 ON THE EXERCISE OF THE MANDATE OF A DEPUTY OR SENATOR

Article 6

1. A Deputy or Senator shall not be held accountable for his activities falling within the scope of the exercise of his mandate during the period of such mandate or after its expiry, subject to Article 6a. For such activities a Deputy or Senator shall be accountable only to the Sejm or the Senate.
2. The activities, referred to in para. 1, shall include the moving of motions, delivery of speeches and voting at the sittings of the Sejm, Senate and National Assembly and their organs, at the sittings of the Sejm's, the Senate's or parliamentary clubs, groups and groupings, as well as other activities indispensably connected with the exercise of the mandate.
3. A Deputy or Senator shall be accountable, in accordance with the principles specified in the Act or in the Standing Orders of the Sejm and the Rules and Regulations of the Senate, for his activity referred to in para. 1.

Article 6a

1. A Deputy or Senator who, in the performance of the activities falling within the scope of the exercise of his mandate, has violated the rights of other persons, may be prosecuted before a court only upon consent of the Sejm or the Senate.

Article 7

1. From the day of announcement of the results of elections until the expiry of the mandate, no Deputy or Senator shall be prosecuted before a criminal court without the consent of the Sejm or the Senate, subject to Article 8.
2. The prohibition referred to in para. 1 shall apply to acts committed until the day of expiry of the mandate, including the acts committed before the day of announcement of the results of elections.
3. The provision of para. 1 shall not apply to prosecutions before a criminal court instituted, before the day of announcement of the results of elections, against a person elected as Deputy or Senator.
4. Prosecution before a criminal court may take place only in respect of an act indicated in the motion which has served as the basis for the granting of such consent by the Sejm or Senate. A separate consent by the Sejm or Senate shall be required to prosecute a Deputy or Senator for the commission of another act.

Article 7a

The limitation period in respect of the prosecution before a criminal court for acts covered by immunity shall not run during the period of enjoyment of the immunity.

Article 7b

1. An application for the granting of consent for the prosecution of a Deputy or Senator before a criminal court for the commission of an offence under public prosecution shall be lodged through the agency of the the Public Prosecutor General.
2. An application for granting consent for the prosecution of a Deputy or Senator before a criminal court for the commission of an offence under private prosecution shall be lodged by a private prosecutor, having submitted the case to the court.
3. An application referred to in para. 2 shall be drawn up and signed by a barrister or a legal counsel, except for applications lodged, in respect of their own cases, by judges, prosecutors, barristers, legal counsels, notaries as well as professors and habilitated doctors in the field of law studies.
4. An application referred to in paras 1 and 2 shall specify:
1) the identity of the applicant and the agent;
2) the first name and surname of a Deputy or Senator and the date and place of his birth;
3) legal basis for the application;
4) precise description of the act to which the application concerns, including the time, place, manner and circumstances of its commission as well as its consequences, particularly the nature of the damage caused by it.
5. The provisions of paras 2–4 shall apply, as appropriate, to applications for granting consent to prosecute a Deputy or Senator before a civil court in cases referred to in Article 6a.

Article 7c

1. An application for the granting of consent for the prosecution of a Deputy or Senator before a criminal court shall be lodged to the Marshal of the Sejm or the Marshal of the Senate, who shall refer the motion to an organ competent to consider that motion under the Standing Orders of the Sejm or Rules and Regulations of the Senate, and shall at the same time notify the Deputy or a Senator to whom the application concerns about the content of the application.
2. An organ competent to consider the motion, referred to in para. 1, shall notify a Deputy or a Senator to whom the application concerns about the date of consideration of the application.
3. At the request of an organ competent to consider the motion, referred to in para. 1, the court or a competent authority before which the proceedings against the Deputy or Senator is held, shall make accessible the files of the case.
4. A Deputy or a Senator to whom the application concerns, shall present to the organ competent to consider the motion referred to in para. 1, explanations and his own remarks on this issue, in the written or oral form.

5. Having considered the case, the authority appropriate to consider the motion referred to in para. 1, shall adopt a report and the proposal of acceptance or rejection of the motion.
6. The Sejm or the Senate shall grant consent for the prosecution of a Deputy or Senator before a criminal court, by means of a resolution adopted by an absolute majority vote of the statutory number of Deputies or Senators. Any failure to obtain the required majority of votes shall mean an adoption of a resolution not to grant consent for the prosecution of a Deputy or Senator before a criminal court.
7. The provisions of paras 1–6 and Article 10a shall apply, as appropriate, to consideration of an application referred to in Article 7b para. 5.

Article 8
1. In a notification referred to in Article 7c para. 1, the Marshal of the Sejm or the Marshal of the Senate shall set the time limit for making by a Deputy or a Senator a statement in which he gives his consent to prosecution before a criminal court.
2. If the Deputy or Senator has made a statement referred to in para. 1, the provisions of Article 7c paras 2–6 shall not apply.
3. A Deputy or a Senator shall lodge a statement referred to in para. 1, in writing, with the Marshal of the Sejm or the Marshal of the Senate who shall apply to an organ appropriate to consider the motion referred to in Article 7c para. 1, for presenting its opinion concerning the formal correctness of the statement.
4. The Marshal of the Sejm or the Marshal of the Senate may oblige a Deputy or a Senator to make the text of the statement more specific within a specified time-limit. Any failure to make the text of the statement more specific shall cause the statement not to be proceeded; The provisions of Article 7c paras 2–6 shall apply in this case.
5. Prosecution before a criminal court may take place only in respect of an act indicated in the motion, in respect of which the Deputy or Senator has given his consent, under the procedure specified in paras 1–4, to be prosecuted. A separate consent, given under the procedure specified in paras 1–4, or in Article 7c, shall be required for prosecution for the commission of another act.
6. In the event that a Deputy or a Senator has given his consent for being prosecuted before a criminal court for part of the acts indicated in the application, the remaining part of application shall be considered under the procedure specified in Article 7c.
7. The Marshal of the Sejm or the Marshal of the Senate shall immediately inform the Sejm or the Senate about statement, referred to para. 1, having been made by a Deputy or a Senator.
8. Any withdrawal of the consent, referred to para. 1, shall have no legal effect.
9. The provisions of paras 1–8 shall not apply to matters referred to in Article 6a.

Article 9
1. The Public Prosecutor General shall, within 60 days of the day of announcement of the results of elections, inform the Marshal of the Sejm and the Marshal of the Senate of the prosecutions against the Deputies and Senators instituted before criminal courts before the day of announcement of the results of elections.
2. In the event that a Deputy or a Senator has obtained mandate in the course of the term of office of the Sejm or the Senate, the provision of para. 1 shall apply as appropriate.
3. A Deputy or Senator against whom the prosecution is held before a criminal court, instituted before the day of election, may submit to the Sejm or the Senate an application that the Sejm or the Senate demand that the prosecution before a criminal court be suspended until the expiry of his mandate. Such a motion may not be applied to the enforcement of a penalty imposed by a valid judgment of the court.
4. An application referred to in para. 3 shall be submitted to the Marshal of the Sejm or the Marshal of the Senate for criminal prosecution.
5. An application referred to in para. 3 shall contain, in particular, precise description of a criminal case, indicating an organ before which the proceedings are held, the reasons for the application and the signature of the applicant.
6. If an application referred to in para. 3 does not comply with the requirements specified in paras 1 and 5, the Marshal of the Sejm or the Marshal of the Senate shall, after seeking

an opinion of the Presidium of the Sejm or the Presidium of the Senate, shall return it to the applicant for rectification.
7. If an application, referred to in para. 3 complies with the requirements specified in paras 1 and 5, the Marshal of the Sejm or the Marshal of the Senate shall refer that application to the organ appropriate under the provisions of the Standing Orders of the Sejm or the Rules and Procedures of the Senate.
8. The provisions of Article 7c paras 2–5 shall apply, as appropriate, to the proceedings in relation to an application, referred to in para. 3.
9. The Sejm or the Senate shall demand the suspension of the prosecution before a criminal court, referred to in para. 3, by means of a resolution adopted by a three-fifths majority vote of the statutory number of Deputies or Senators.
10. A Deputy or Senator may make a statement to the Marshal of the Sejm or the Marshal of the Senate in which he shall declare not to submit an application, referred to in para. 3. The provisions of para. 5 and 6 and Article 8 para. 7 shall apply as appropriate.

Article 10
1. A Deputy or a Senator shall be neither detained nor arrested without the consent of the Sejm or the Senate, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings.
2. The prohibition against detention referred to in para. 1 shall include all the forms of deprivation and limitation of personal liberty of the Deputy or a Senator by law enforcement organs.
3. Any detention of a Deputy or a Senator, referred to in para. 1, shall be immediately communicated to the Marshal of the Sejm or the Marshal of the Senate. The Deputy or Senator shall be immediately released on the demand of the Marshal of the Sejm or the Marshal of the Senate.
4. An application for granting consent for detention or arrest of a Deputy or a Senator shall be lodged through the agency of the Public Prosecutor General.
5. An application referred to in para. 4 shall specify:
1) the identity of the applicant;
2) the first name and surname of a Deputy or Senator and the date and place of his birth;
3) precise description of the act and its legal qualification;
4) legal basis for the application of a given measure;
5) reasons, pointing out, in particular, the necessity of application of a given measure.
6. The provisions of Article 7c paras 2–5 shall apply, as appropriate, to the proceedings in relation to an application for granting consent for detention or arrest of a Deputy or a Senator
7. The Sejm or the Senate shall grant consent for the detention or arrest of a Deputy or a Senator, by means of a resolution adopted by an absolute majority vote of the statutory number of Deputies or Senators. Any failure to obtain the required majority of votes shall mean an adoption of a resolution not to grant consent for the detention or arrest of a Deputy or a Senator.
8. The requirement to obtain consent of the Sejm or the Senate shall not be applied to the enforcement of a penalty imposed by a valid judgment of the court.

(…)

Article 10b
1. The provisions concerning the granting of consent for the prosecution of a Deputy or Senator before a criminal court, shall apply as appropriate responsibility for misdemeanours.
2. In case a Deputy or a Senator commits a misdemeanour mentioned in Chapter 11 of the Code of Misdemeanours of 20th May 1971 (consolidated text in Dziennik Ustaw of 2013, item 482 with amendments), acceptance by the Deputy or the Senator of a ticket or payment of a fine, in case of imposing a default ticket, mentioned in Article 98 para. 1 no. 3 of the Code of Procedure in Cases of Misdemeanours (consolidated text in Dziennik Ustaw

of 2013, item 395 with amendments), shall constitute a statement in which the Deputy or the Senator consents to be brought to this kind of legal accountability[39].

THE STANDING ORDERS OF THE SEJM OF 30TH JULY 1992

Article 133

1. The Rules and Deputies' Affairs Committee shall consider motions to grant permission to hold a Deputy accountable for commission of offences or misdemeanours or to grant permission to arrest or detain him.
1a. A Deputy, against whom a motion has been moved, shall not participate in a vote on the report of the Committee at the sitting of the Committee.
(...)
5. The report of the Committee shall be immediately delivered to the Deputies.
6. The Sejm shall examine the report of the Committee by hearing only a Rapporteur. The right to speak shall also be granted to the Deputy against whom the motion has been moved. The report shall not be subject to discussion.

THE RULES AND REGULATIONS OF THE SENATE OF 23RD NOVEMBER 1990

Article 26

1. A motion for a Senate consent to bring a Senator to criminal liability is submitted by the Marshal of the Senate to the Rules, Ethics and Senatorial Affairs Committee. After having considered the motion, the committee adopts a report jointly with a proposal to accept or reject the motion.
2. The Senate considers the report of the Rules, Ethics and Senatorial Affairs Committee without holding a discussion. The Senator concerned by the motion has an opportunity to provide explanations and other Senators are entitled to question him on the issue at hand.
3. If the Senate completes its term in office after the proceeding on the motion has been initiated but before the Senate rules on the matter, the proceeding continues in the Senate of the successive term provided that the Senator concerned by the motion is re-elected, with the understanding that:
1) all actions taken hitherto remain binding, except as provided in subpara. 2 above;
2) the term to effect necessary actions in connection with the examined motion, interrupted as a result of the end of the Senate term in office, begins from the start on the day the Senator concerned by the motion takes oath;
3) if the Rules, Ethics and Senatorial Affairs Committee of the preceding term has adopted the report referred to in para. 1 above, the Chairman of the Rules, Ethics and Senatorial Affairs Committee of the following term must present it within 30 days from the day the Senator concerned by the motion takes oath.

Article 27

1. Provisions of Article 26 shall apply accordingly to a proceeding on a motion to obtain a Senate consent to bring a Senator to liability for a misdemeanour, proceeding on a motion to obtain a Senate consent to bring a Senator to civil liability before a court of law for activities within his mandate which breach third party rights, and proceeding on a motion to obtain a Senate consent to detain or arrest a Senator.
2. Provisions of Article 26, paras. 1-2 apply accordingly to a proceeding on a motion to have the Senate request a suspension of a criminal proceeding initiated prior to the Senator's election.

[39] Translation made by the author.

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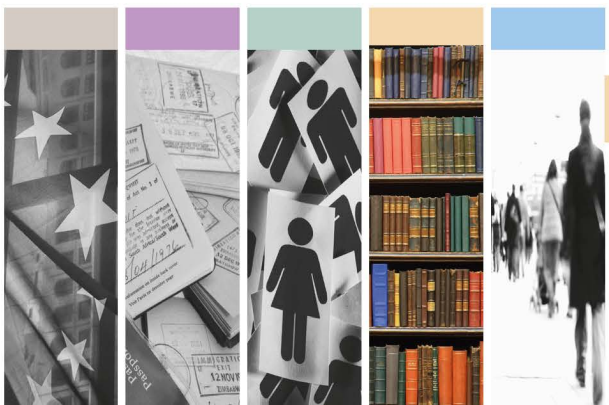

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