Parliamentary Immunity in a European Context
Two distinct immunities

Non-accountability
- Acts and utterances “in the exercise of the mandate” (or similar)
  - Absolute
  - Perpetual
  - Cannot be lifted (all subject to exceptions)

Inviolability
- Extra-parliamentary (beyond the scope of the mandate)
  - Protection from certain measures
  -Temporally limited
  - Can be lifted
The immunity dilemma

- Consensus: A *certain level* of immunity is necessary

- However:
  - Immunity is at odds with equality before the law
  - Broader immunity = higher risk of abuse

- Hence the need to strike a balance
Immunity in ECtHR case law

- Cases under
  - Article 6 ECHR: Access to justice
  - Article 10 ECHR: Freedom of expression
Immunity in ECtHR case law

- Since A v. UK: emergence of a ‘functional’ approach:
  - Immunity is accepted as far as it is necessary to safeguard the unimpeded discharge of the mandate.
  - Immunity beyond necessity for the functioning of parliament violates the ECHR.
Immunity in ECtHR case law

- Conservative interpretation of ‘parliamentary functions’
- No clear distinction between non-accountability and inviolability (except *Kart v. Turkey*)
- However: Inviolability is increasingly under pressure
Immunity in CJEU case law

- Very scarce case law
- Necessity to define the scope of parliamentary duties
- Opinions of Advocates General in *Marra* and *Aldo Patriciello*
Immunity in CJEU case law

- Current state of the law:
  - Non-accountability requires a material connection between the act / utterance in questions and the duties of an MEP

- Very similar to the approach of the ECtHR
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