



*Directorate-General for Library,
Research and Documentation*

RESEARCH NOTE

Freedom of expression of parliamentarians

[...]

Subject: Analysis of the disciplinary sanctions that may be imposed by the parliaments of the Member States because of an opinion expressed or comments made by a member of parliament before the assembly. Presentation of the grounds on which sanctions may be imposed and identification of the most significant specific cases of application.

[...]

September 2017

[...]

SUMMARY

INTRODUCTION

1. The freedom of expression of parliamentarians forms part of the legal tradition of all Member States. It finds expression in the requirement to protect parliamentarians, in their capacity as elected representatives, when they are performing their duties within the parliamentary precinct.
2. However, that protection does not mean that a parliamentarian who has failed to comply with the rules of conduct within the assembly in which he or she sits cannot be subject to disciplinary sanctions for his or her disruptive conduct.
3. This note considers the freedom of expression of the members of the national parliaments of the Member States from two separate perspectives: on the one hand, the system of disciplinary sanctions imposed by those parliaments on their members for comments made in the course of their parliamentary duties and actual application of those sanctions, and, on the other hand, the nature and the scope of the review by the national courts of the sanctions imposed.
4. Research was conducted in two stages. In an initial stage, the existing relevant rules, practice and/or case-law in the legal systems of all the Member States (with the exception of Cyprus and Malta) was reviewed. The rules applicable to the Parliamentary Assembly of the Council of Europe ('PACE') were also examined. On the basis of that research (for the findings, see the tables and questionnaires contained in the annex), the second stage saw the selection of the judicial orders deemed representative of the array of existing or planned solutions in the national laws. Those legal orders ¹ formed the basis of a more in-depth study and are the subject of the contributions that follow this summary of their content.
5. In that regard, consideration will first be given to the internal rules of the parliaments of the Member States which provide for a system of disciplinary sanctions and, in particular, the grounds on which sanctions may be imposed (I.), before examining the relevant procedural rules (II.) and, lastly, the nature and the

¹ An in-depth study was made of Bulgarian, Czech, Finnish, French, German, Hungarian, Irish, Italian, Latvian, Polish, Spanish and UK law as well as the case-law of the European Court of Human Rights.

scope of judicial review of the sanctions imposed by the Parliament on one of its members in the different national legal orders, as well as the case-law of the European Court of Human Rights on the review of those disciplinary sanctions (III.).

I. SYSTEM OF DISCIPLINARY SANCTIONS IMPOSED ON A PARLIAMENTARIAN

A. EXISTENCE OF A SYSTEM PROVIDING FOR DISCIPLINARY SANCTIONS

1. MEMBER STATES WITH SUCH A SYSTEM

6. In the vast majority of the Member States examined, provision is made for a system of disciplinary sanctions that may be imposed on parliamentarians.
7. In some Member States, the rules on the conduct of parliamentarians are laid down in the national constitution, without being reproduced in laws or regulations, and in very brief terms. This is the case in **Finland**: the Finnish Constitution provides that members of parliament must behave in a serious and dignified manner that does not cause offence to any other person.
8. In other Member States, the Constitution entitles the national assemblies to lay down the rules of conduct and to ensure compliance with them (**Hungary and Ireland**), or that power is the natural extension of the assembly's right to govern its own functioning (**Spain and PACE**).
9. The system of disciplinary sanctions listing the grounds on which sanctions may be imposed, the range of applicable sanctions and the safeguards protecting parliamentarians in that regard are almost always laid down in the specific law on the national assembly (**Hungary**) and/or in the rules governing a respective assembly (**Bulgaria, Czech Republic, France, Germany, Ireland, Italy, Latvia, Poland, Spain, United Kingdom and PACE**).
10. In addition, in **Ireland**, the internal rules are supplemented by the rulings of the chairs of each chamber ('the Salient Rulings of the Chair'): for example, Salient Ruling No 428 contains a list of unparliamentary expressions which have been deemed unacceptable.

11. Furthermore, in most Member States, in addition to the disciplinary rules laid down in the laws and/or regulations set out below, there is a set of rules of parliamentary ethics or codes of conduct with which parliamentarians are supposed to comply. Application of those rules is monitored by parliamentary committees or commissions that have the power to recommend that a certain number of sanctions be imposed or to impose them themselves (**Bulgaria, Ireland, Latvia, Poland, United Kingdom and PACE**).

2. MEMBER STATES WITHOUT SUCH A SYSTEM

12. This category includes a limited number of Member States (**Estonia, Portugal and Sweden**) whose legislation does not provide for disciplinary sanctions, strictly speaking, in respect of parliamentarians. In order to maintain order in parliamentary debates, the president of the respective assembly can withdraw speaking rights from a parliamentarian only if he or she does not heed the call to order and continues to make insulting remarks.
13. In addition, in **Portugal**, in cases of slander, the parliamentarians concerned are entitled to speak for two minutes before the Parliament. In **Sweden**, it falls to the political parties to ensure that their members observe good behaviour in the Parliament.

B. GROUNDS ON WHICH SANCTIONS MAY BE IMPOSED

1. COMPROMISING THE PROPER FUNCTIONING OF PARLIAMENTARY WORK

14. The rules governing discipline within the assembly all seek in one way or another to ensure that parliamentary work proceeds in an orderly fashion. Accordingly, compromising the proper functioning of such work is one of the valid grounds for imposing a disciplinary sanction in **all the Member States** providing for such sanctions in respect of parliamentarians and at the **PACE**.
15. The most striking example of the prohibition of inappropriate conduct is the ban on any use of force or violence, coupled with the ban — whether express (**Spain**) or not — on the bearing of arms.

16. In addition, a parliamentarian's clear refusal to comply with the internal rules and obstructive behaviour by words or actions serve very often as the ground for imposing a disciplinary sanction on that individual.
17. Here are some examples of such unlawful conduct: attempt to compromise, in general terms, the authority of the president of the assembly by challenging his or her management of a sitting (**Germany**), refusal to end an intervention (**Bulgaria**), refusal to comply with a call to order, inclusion in an intervention of irrelevant comments or tiresome repetition (**Hungary**), refusal to comply with the request by the president of the assembly to leave the chamber (**Italy**) etc.
18. A disciplinary sanction may therefore be imposed for language or conduct threatening the dignity of the assemblies (**France, Germany, Latvia and Poland**), which is one of the component values of parliamentary order. It is noted, by way of example, that in **France** any parliamentarian who has failed to comply with the rules laid down in the assembly's code of ethics may be subject to disciplinary sanctions.

2. PREJUDICE CAUSED TO MEMBERS OF PARLIAMENT

19. In **all the Member States** providing for disciplinary sanctions in respect of parliamentarians and at the **PACE**, threatening, intimidating, provoking or insulting other members of the assembly may serve as a ground for imposing such a sanction on a parliamentarian.
20. Thus, any parliamentarian who makes a personal accusation or engages in a personal attack against another parliamentarian or who directs insults, provocative comments or threats to one or more of his or her colleagues (**Bulgaria, France, Italy and Portugal**) or who is found guilty of insulting a person in an official position or of provocative actions towards the assembly or its president (**France and Poland**) may be subject to disciplinary sanctions.
21. Prejudice caused by parliamentarians to other public figures may also be punishable by a disciplinary sanction (**Bulgaria, Czech Republic, France, Italy and Poland**). In that connection, in **France**, any parliamentarian found guilty of insulting or engaging in provocative or threatening conduct towards the President of the

Republic, the Prime Minister, members of the government or the assemblies provided for in the Constitution may be the subject of disciplinary sanctions.

3. COMMENTS DEEMED TO BE INSULTING OR PROVOCATIVE TOWARDS THIRD PARTIES

22. In all the Member States, with the exception of **Belgium** and **France**, comments deemed to be insulting or provocative towards third parties, such as migrants, are, as such, a ground for imposing a disciplinary sanction on a parliamentarian under the applicable rules of those Member States.
23. The prohibition on making insulting comments towards third parties may be worded in general terms: the conduct of a member of parliament must not cause offense to any other person (**Finland** and **Poland**) and it must be polite in relation to society as a whole (**Latvia**), and remarks constituting an affront to human dignity are prohibited (**PACE**).
24. In the **Bulgarian** Parliament, members of parliament are not allowed to engage in personal attacks against, make offensive remarks or gestures towards or threaten anyone, or disseminate information relating to the private life of citizens or damaging their good reputation.
25. In rarer cases, there is an express provision: a sanction must be applied where, in the course of his or her intervention, a member of parliament uses an indecent or offensive expression in relation to a person or a group, in particular a national, ethnic, racial or religious group (**Hungary**). Parliamentary codes of ethics may include such provisions (**Latvia** and **Poland**). For example, in **Latvia** such a code prohibits parliamentarians from referring, inter alia, to the race, nationality or social background of an opponent in their speeches.
26. In some cases, not only the words but also the actions of a member of parliament may be regarded as insulting towards third parties. For instance, in **Finland** a member of parliament was issued with a reprimand by the president of the assembly for having taken a photograph of his guest, who made a Hitler salute in the gallery of the meeting room.
27. Nonetheless, it cannot be concluded with certainty from the rules in force in some Member States and the lack of a parliamentary practice of applying sanctions for

insulting comments made towards third parties that such a sanction may be imposed on the ground in question, even though *a priori* that option does not appear to be ruled out (**Greece, Ireland, Italy, Luxembourg and Romania**).

C. AVAILABLE SANCTIONS

28. There is a wide range of sanctions that may be applied to members who fail to comply with the rules of conduct within the assembly. They will be presented below in increasing order of severity, from a simple call to order to the suspension of a parliamentarian or even his or her dismissal.

1. CALL TO ORDER AND WITHDRAWAL OF SPEAKING RIGHTS

29. A call to order is not only the least serious sanction, it is also the most widespread. It is normally applied to any member who disrupts debate or parliamentary order. Some Member States also have an '*ad rem*' call-to-order sanction which may be imposed on any speaker who deviates from the subject of the deliberations as defined in the order of business (**Hungary and Poland**).
30. The next sanction is usually a call to order that is entered in the parliamentary record. This sanction may be used against any parliamentarian who, in the same sitting, has been the subject of an initial call to order or who has insulted, provoked or threatened a colleague (**France and PACE**).
31. It is noted that in some Member States (**Hungary and Spain**), after being reprimanded or called to order once, a member who continues to flout the regulatory requirement may (temporarily) be denied the right to speak.
32. Furthermore, speaking rights may also be withdrawn without a call to order. This is the case in **Hungary**, where a member of parliament challenges a ruling of the chair of the sitting or the fact that that person is chairing the sitting, save where that member submits a point of order.
33. In addition, the call-to-order sanction might not be expressly listed as a disciplinary measure (**Ireland**). However, even in that scenario, the president of the assembly still has the power to put a stop to obstructionist interventions.

34. Cases of application of the sanction in question include the following: the denigration of homosexuals as a ‘fortunately small minority’ (**Germany**); heckling during the voting process, comparing a parliamentarian to an ‘anaesthetised slacker’, a statement to the effect that migrants have a ‘vision of the world like that of Neanderthal man’ and that Neanderthal man was ‘fortunately wiped out in our country’ (**Austria**); offensive gestures made to colleagues (giving them the finger or sticking up two fingers), imitating the clucking of chicken whilst a female colleague was speaking during a sitting, or even a male member of parliament’s refusal to refer to the chair of the sitting in the female form (**France**); a statement made in an article published on a website that the failure of atheists, members of the Orthodox Church and Muslims to respect the Polish Constitution and the values recognised in Poland should serve as grounds for their deportation (**Poland**); reference to incidences of mistreatment by Greek police officers naming those individuals (**PACE**).

2. CENSURE

35. It is noted, first of all, that this is a sanction generally imposed after a call to order where the parliamentarian in question does not heed the instructions and continues to disrupt the order of the sitting.
36. This sanction goes by different names: ‘**admonition**’ (**United Kingdom**), ‘**reprimand**’ (**Latvia** and **United Kingdom**), ‘**rebuke**’ (**Bulgaria**, **Germany** and **Ireland**) and ‘**censure**’ (**Belgium**, **France**, **Italy** and **PACE**). There are two sanctions in **Bulgaria** and **Poland**: reprimand and rebuke. For example, in **Bulgaria**, a member of parliament is subject to rebuke when, despite the call to order or the reprimand, he or she continues to disrupt the order of the sitting or causes disorder within the chamber.
37. Furthermore, in **Latvia**, a reprimand may be given orally, recorded in the minutes of a sitting of the ethics commission or issued in writing, with the option of its publication in the Official Journal. In **Italy** and at the **PACE**, censure may be accompanied by a temporary exclusion.
38. This sanction was imposed on a number of members of parliament who had questioned the honour of President Mitterrand by referring to ‘his past’ during the war (**France**), a member of parliament who referred to the methods which,

according to him, are used in China and suggested ‘lining up people against a wall’ (**Latvia**), and a member of parliament who made a personal comment to a colleague, namely ‘don’t point at me with your dirty finger’ (**Poland**).

3. SUSPENSION OF PARTICIPATION IN PARLIAMENTARY ACTIVITY

39. In most Member States, the temporary exclusion of a parliamentarian, which may range from his or her exclusion from the remainder of the sitting to exclusion from a number of sitting days or sessions, is the sanction of last resort (**Finland, France, Germany, Hungary, Ireland, Italy, Latvia and United Kingdom**).
40. In **Finland**, a member of parliament may be excluded from parliamentary sittings for a specified period not exceeding two weeks where he or she has repeatedly disrupted the parliamentary order. In **Latvia** the maximum duration of exclusion is six sittings of the Parliament, and in **Spain** a senator’s suspension may be up to one year in length where he or she attacks another senator or certain members of the government.
41. In **France**, censure coupled with temporary exclusion means that the parliamentarian is prohibited from taking part in the work of the assembly for a full fifteen days following the imposition of the measure. That period may be increased to thirty days if the parliamentarian refuses to comply with the president’s order.
42. In **Hungary**, the maximum duration of the suspension is nine sitting days; it may be applied repeatedly if the parliamentarian continues to resort to physical violence.
43. The sanction of exclusion has already been imposed on some parliamentarians of the left-wing party ‘Die Linke’ for having shown signs bearing the names of civilians killed in an air raid by the German army in Afghanistan, on one parliamentarian for having denigrated one of his colleagues and on another for having insulted demonstrators of an opposing political persuasion during the discussion on a draft law on demonstrations (**Germany**); on a member of parliament who caused a scene during a public hearing at the National Assembly about the issue of poorly parked ministerial cars (**France**); and on a senator who, during debate in the Senate of a draft law to grant citizenship to people born in Italy, took to the government benches holding a sign on which was written ‘Stop the Invasion’ (**Italy**).

4. DISMISSAL

44. Since June 2017, the Rules of Procedure of the **PACE** have provided for the possibility of dismissing members holding certain elective offices (President or Vice-Presidents of the PACE and Chairs or Vice-Chairs of the PACE committees) who have engaged in serious misconduct by committing a serious breach or repeated breaches of the provisions of the Code of Conduct of Members of the Parliamentary Assembly. It is conceivable that such serious misconduct takes the form of misuse by one of those members of his or her freedom of expression.
45. For the sake of completeness, it is noted that the list of disciplinary sanctions that may be imposed on members of the Parliament of the **United Kingdom** who engage in disobedience or overtly fail to respect the authority of the chamber also includes expulsion and imprisonment. However, that first sanction is rarely used and has never been used against a member of parliament for comments made by him or her, and the second one was last applied in 1880.

5. FINANCIAL SANCTIONS

46. There are two types of financial sanction: the loss of a monetary entitlement and the imposition of a fine.
47. It is common for a member of parliament who is excluded from a sitting for disciplinary reasons not to receive remuneration for the sittings from which he or she has been excluded (**Bulgaria, Germany, Hungary, Spain and United Kingdom**) or for his or her emoluments to be reduced in another way (**France, Hungary, Poland and Spain**). In **France**, even a call to order that is entered in the records automatically entails a loss of one quarter of the allowance paid to a member of the National Assembly for one month. The censure of a member of parliament accompanied by temporary exclusion entails the loss of half of the allowance granted for two months.
48. In **Hungary**, the emoluments of a parliamentarian may be reduced either as an additional sanction or as the main sanction. However, depending on the seriousness of the offence, the maximum amount of the reduction is limited to one third of the monthly emolument of the parliamentarian concerned or to its entirety.

49. Nevertheless, this is not always the case and in some Member States even a member of parliament who is excluded for an extended period usually continues to receive full pay (**Finland, Ireland and Italy**).
50. Some Member States provide for fines as a disciplinary sanction (**Czech Republic, Germany, Latvia, Slovakia and United Kingdom**). For example, in **Latvia**, where a member of parliament is excluded from parliamentary sittings, that member is required to pay a fine amounting to 20% of his or her monthly remuneration for each sitting. In the **Czech Republic**, a fine may extend to an amount equal to the parliamentarian's monthly remuneration. In **Slovakia**, a fine of EUR 1 000 was imposed on two members of parliament for xenophobic and homophobic comments made during a sitting. They used language insulting to, in particular, the Islamic faith and the LGBT community.

6. OTHER TYPES OF DISCIPLINARY MEASURES

51. Other types of disciplinary measures include making an apology (**Czech Republic, Ireland and United Kingdom**), the removal of defamatory language from the minutes of the debate (**Belgium and PACE**), the temporary denial of the right to sign certain acts of the assembly in the case of serious breaches of the rules of conduct (**PACE**) and the identification of a parliamentarian who has broken the rules ('naming') (**Ireland and United Kingdom**).
52. In the **United Kingdom**, the naming procedure will also apply to a situation in which a member of parliament engages in hate speech regarding minorities and members of the opposite gender. However, since parliamentary privilege does not apply in criminal matters, the member of parliament could be open to criminal prosecution if his or her words constitute an offence. It may be noted, in this regard, that a member of parliament was questioned by the police following comments made about the wearing of the burqa during a parliamentary debate.
53. Furthermore, in the **Czech Republic**, a parliamentarian who has committed an administrative offence (for example, defamation) subject to the powers afforded to the administrative authorities may opt to have his or her case examined as part of disciplinary proceedings. For instance, there is the case of a Czech senator who had insulted a third party outside the Senate because that person belonged to a national

minority. The comment was examined, at the senator's request, as part of disciplinary proceedings and a fine (of EUR 766) was imposed.

D. PRACTICAL APPLICATION

54. On the one hand, parliamentary debate is generally characterised by self-discipline and compliance with the rules of conduct. It is only during difficult debates in which tensions are exacerbated that disruptive behaviour might occur.
55. For example, in **Finland**, over the past hundred years, disciplinary sanctions have been applied only around 20 times. In **France**, under the Fifth Republic, disciplinary sanctions are rarely imposed and primarily act as a warning or a deterrent.
56. In **Latvia**, the sanctions imposed are not severe and generally consist in oral or written reprimands.
57. On the other hand, in practice, parliamentarians commonly escape any sanction for comments or opinions expressed in the context of parliamentary debate, or more generally in the exercise of their parliamentary duties (**Bulgaria, Ireland, Netherlands** and **PACE**).
58. It is observed, for instance, that in **Bulgaria** racist hate speech, in which the Roma in Bulgaria were called 'savage, arrogant and aggressive great apes', made from the rostrum of the Bulgarian Parliament in December 2016 passed without any objection. In **Ireland**, even where the competent parliamentary body found that there was an abuse of privilege by a parliamentarian who had named several holders of off-shore bank accounts, sanctions were not imposed.
59. In addition, it is possible that, on the same facts, a sanction is imposed only on the member of parliament of the opposition and not on that of the party in power (**Bulgaria**).
60. It should be noted, however, that in some Member States (**Latvia** and **Poland**) a disciplinary sanction may be imposed on a parliamentarian on account of his or her conduct not only within but also outside the Parliament, such as — for example — on account of an opinion expressed in an article published online.

61. Similarly, in **Poland**, a disciplinary sanction, namely rebuke, was imposed on a member of parliament for having called Polish priests ‘uneducated simpletons’ in a broadcast interview.
62. In addition, political groups often have their own disciplinary sets of rules and can impose sanctions laid down in their statutes. For example, the **Finnish** political group ‘Perussuomalaiset’ rebuked one of its members who had committed an offence by expressing hate speech on Facebook.

II. RULES OF PROCEDURE

A. BODY VESTED WITH THE POWER OF SANCTION

63. Disciplinary sanctions, in particular the lowest sanctions and those which are immediately applicable, such as calls to order and the withdrawal of speaking rights, are as a rule handed down by the President of the Assembly or the chair of the sitting at the time of the facts (**Bulgaria, Finland, France, Hungary, Ireland, Italy, Latvia, Poland, Spain, United Kingdom and PACE**), who ensures that order is maintained within the assembly and during meetings and debates. In **Hungary**, the chair of a parliamentary committee is also authorised to impose sanctions when that committee is in session. Generally speaking, parliamentarians subject to those sanctions do not enjoy any procedural safeguards in that regard.
64. Heavier sanctions may be imposed by a body of the assembly, for example the Office ² (**Finland, Italy and Poland**). They may also be imposed by the assembly itself (**United Kingdom**) or by the assembly on a proposal from the assembly’s Office (**France**) or from the chair of the sitting (**Hungary**). In some Member States, they continue to be handed down by the President of the assembly alone (**Bulgaria, Germany and PACE**).
65. Often, a parliamentary commission or committee responsible, inter alia, for matters of parliamentary ethics ensures that parliamentarians comply with the rules of ethics (**Bulgaria, Hungary, Latvia, Poland and United Kingdom**). For example, in **Latvia**, it is on a proposal from such a commission that the Parliament votes for or against a parliamentarian being prohibited from speaking during debates or

² The Office is a collegiate body in charge of the internal functioning of the assembly. In some Member States, it is the competent body in disciplinary matters, in particular.

excluded from parliamentary sittings. It is also that commission alone which, in **Latvia**, imposes the reprimand sanction.

B. PROCEDURAL SAFEGUARDS

66. In the case of the imposition of a serious sanction, in most Member States the relevant rules afford parliamentarians the right to be heard or for one of their colleagues to be heard on their behalf (**Bulgaria, Czech Republic, France, Germany, Hungary, Ireland, Latvia, Poland, United Kingdom** and **PACE**). Furthermore, provision may be made for that right in the case of lower sanctions (**Italy** and **Spain**). For example, in **Italy**, any member who has been called to order and who intends to justify his or her actions or words may speak immediately or at the end of the sitting.
67. In addition, some Member States provide for the possibility of an internal appeal against heavy sanctions (**Bulgaria, Germany, Hungary, Poland** and **United Kingdom**) or those imposed by the commission or committee responsible for matters of parliamentary ethics (**Czech Republic, Poland** and **United Kingdom**). For example, in the **United Kingdom**, in the most serious cases, the parliamentarian concerned must be provided with a clear and precise statement setting out the allegations made against him or her, have the option of seeking legal advice, be able to use the services of a legal adviser at any stage of the procedure, hear and cross-examine witnesses, attend meetings at which witness statements are made and other evidence is presented, and receive the corresponding transcripts.
68. Furthermore, in **Spain**, any parliamentarian subject to disciplinary measures, regardless of their severity, for disruptive behaviour within the parliamentary precinct is, as a rule, afforded a remedy enabling him or her to challenge those measures.
69. In **Finland**, even though provision is not made for procedural safeguards in the rules governing the conduct of members of parliament, in practice, in the case of serious sanctions, they have the right to be heard, to access the file and to be assisted by a lawyer.

III. JUDICIAL REVIEW OF DISCIPLINARY SANCTIONS IMPOSED ON A PARLIAMENTARIAN

A. AVAILABILITY OF JUDICIAL REMEDY

70. Once a disciplinary sanction is imposed on a parliamentarian by the assembly of which he or she is a member, the more delicate issue of its review by a court arises.
71. In the vast majority of Member States, a parliamentarian is unable to bring legal proceedings for the annulment of a sanction imposed on him or her by the bodies of the assembly of which he or she is a member (**Finland, France, Hungary, Ireland, Italy, Latvia, Poland and United Kingdom**).
72. In some Member States, the relevant rules do not provide for such a possibility (**Italy, Latvia and Poland**); in others, case-law similarly establishes that administrative, judicial and constitutional courts do not have jurisdiction to hear and determine such an action (**France, Hungary, Ireland and United Kingdom**). For example, in the **United Kingdom**, the Bill of Rights 1689 provides that neither the freedom of speech nor the freedom of debates or proceedings in Parliament can be impeached or questioned in any court or place outside the Parliament itself. This confers on the chambers of the Parliament the right to regulate their internal affairs without outside interference, meaning that the courts generally cannot intervene in parliamentary deliberations, even in the event of a breach by a chamber of its own rules of procedure.
73. The **French** Council of State bases its finding that it lacks jurisdiction on the fact that the system of sanctions laid down in the rules governing the National Assembly forms part of the status of parliamentarians, the specific rules for which arise from the nature of their duties; that status thereby relates to the exercise of national sovereignty by the members of the Parliament.
74. As for the **Irish** Supreme Court, it has found that the courts cannot conduct any judicial review of interventions made within the two chambers of the Parliament or before the parliamentary committees. It follows that even comments inciting hatred made before one of those chambers are excluded from review by the courts and parliamentarians are answerable only to the chamber of which they are a member.

75. There are, however, some exceptions (**Germany, Lithuania, Slovakia, Slovenia, Spain** and regional parliaments of the **United Kingdom**). For example, unlike the UK Parliament, the regional parliaments (namely, the **Scottish** parliament and the **Welsh** and **Northern Irish** assemblies) do not have the right to regulate their own internal affairs without external interference. Accordingly, their decisions to impose sanctions may be challenged before the courts, in the same way as any other internal decision of the Parliament capable of producing legal effects.
76. In **Germany**, provision is made for that possibility in the Law on the Federal Constitutional Court and the respective laws on the constitutional courts of the federal states (*Länder*). Under those laws, the member of parliament concerned must demonstrate that the disciplinary sanction imposed infringes or compromises the rights or obligations conferred on him or her by the Constitution. In that regard, the German Federal Constitutional Court has found that reprimand (*Rüge*) does not affect the status of parliamentarians and, therefore, it is excluded from review by the courts, as a rule. However, other disciplinary sanctions, such as the withdrawal of speaking rights, a temporary exclusion from a sitting or a fine may affect the rights enjoyed by a member of parliament under the Constitution and, therefore, may be challenged in judicial proceedings before the Federal Constitutional Court (or before the constitutional courts of the *Länder* in the case of members of the parliaments of those *Länder*).
77. Similarly, in **Spain**, the ability of a parliamentarian subject to a sanction to bring legal proceedings is provided for in the Law on the Constitutional Court. More specifically, it is stipulated, in that regard, that decisions or actions not having the force of law, taken by legislative assemblies or bodies of those assemblies, and which infringe the rights or freedoms protected by the Constitution, may form the subject of an action in accordance with the internal rules of the chambers or assemblies. It is observed, for example, that an application made by a parliamentarian is subject to formal requirements, such as compliance with a deadline, which is six months in **Germany**, and three months in **Spain**, following the imposition of the contested sanction.
78. The **Lithuanian** Constitutional Court and the **Slovak** Supreme Court have indirectly acknowledged the right of parliamentarians to bring legal proceedings against a decision imposing a disciplinary sanction on them. In that regard, the former court

has held that any person must have the right to start proceedings when his or her rights have been infringed, and that the absence of rules expressly providing for the right to start proceedings does not mean, in itself, that that constitutional right is called into question. The latter court has held that, where a dispute is brought before a court and that dispute does not fall within the competence of any other public authority, it cannot find that it lacks jurisdiction despite the fact that its jurisdiction is not established by law.

79. In addition, in **Lithuania**, the administrative courts have jurisdiction to hear and determine actions brought by parliamentarians subject to a sanction against a decision taken by the Parliament's ethics commission. Similarly, in **Slovenia**, parliamentarians may bring proceedings before an administrative court against a decision concerning the loss of their monetary entitlement.
80. It remains to be noted that, in some Member States, the answer to the question of whether a disciplinary sanction may be challenged before a court is not so clear. This is the case in **Bulgaria**, where the Constitutional Court held in a judgment that action taken pursuant to the rules of the National Assembly cannot form the subject of an action through official channels or of legal proceedings but only that of a constitutional challenge. However, the court did not elaborate on that statement in the judgment in question and the review procedure covering compliance with those rules is not established by law.
81. In the **Czech Republic**, it is apparent from the case-law that a decision imposing a disciplinary sanction on a parliamentarian cannot form the subject of legal proceedings. Nevertheless, according to legal literature, a review of the constitutionality of the decisions adopted as part of disciplinary proceedings is not excluded, as a rule.

B. SCOPE OF JUDICIAL REVIEW

82. With regard to speaking rights claimed by a member of parliament before the **German** Federal Constitutional Court, that court found that that right does not mirror the freedom enjoyed by a citizen vis-à-vis the State but is rather an essential right for engaging in parliamentary activities. According to the Constitutional Court of Saxony, speaking rights may be restricted where they are used to commit offences such as insulting people in official positions. On the same grounds, it is

clear from **Hungarian** constitutional case-law that the freedom of expression of parliamentarians must be protected at a lower level than that at which the freedom of expression is protected as a fundamental right.

83. In that regard, **German** constitutional case-law specifies that the application of legal concepts subject to interpretation which are used in internal rules, in particular ‘parliamentary order’ and ‘the dignity of the Parliament’, essentially falls within the competence of the President of the Parliament. Nonetheless, judicial review is not limited to the question of whether the sanction was imposed arbitrarily or improperly. German case-law has established the rule that judicial review must be more robust where a sanction relates not to the conduct of a member of parliament but to comments made by him or her.
84. Proceedings were brought before the Constitutional Court of Mecklenburg-Vorpommern (one of the *Länder* in **Germany** located in the far north of the country) by a parliamentarian who had been subject to a call to order for having called homosexuals a ‘fortunately small minority’. That court upheld his action on the ground that the terms in question did not violate human dignity. By contrast, the proceedings brought against the sanctions for denigration of another parliamentarian and for comments insulting to demonstrators of an opposing political persuasion were dismissed by the constitutional courts of the respective *Länder* (**Germany**).
85. The **Spanish** Constitutional Court upheld the action brought by a member of parliament who had been suspended from her duties for a month for having called the President of the Council of the government ‘corrupt’ during the latter’s intervention before the parliamentary assembly, and for having continued to speak after being called to order and having her speaking rights withdrawn following a warning. The Constitutional Court found that the rules of the assembly were not violated since debate during the session concerned was able to continue normally despite the disruption. In addition, the Constitutional Court found that a procedural rule was infringed when the sanction was imposed because it was imposed after further debate on other matters had taken place, meaning that there had been a failure to comply with the requirement that sanctions be applied immediately.
86. Furthermore, it must be noted that the Constitutional Court of the **Czech Republic**, which considers that it lacks jurisdiction to conduct a judicial review of disciplinary

proceedings involving a parliamentarian, nevertheless found that it might take a different view if the assembly were to exceed its powers (for example, where a sanction was not imposed on the basis of a law).

C. CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

87. The European Court of Human Rights ('ECtHR') has already ruled on the review of disciplinary sanctions imposed on parliamentarians. In that regard, reference should be made to the judgment of the Grand Chamber of 17 May 2016 in *Karácsony and Others v. Hungary*.³ In that judgment, after identifying that there was interference, the ECtHR refers to the same three criteria to review the compatibility of the sanction being examined with Article 10⁴ of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') as those which it uses in its case-law on the review of restrictions on the freedom of expression: namely, the fact that the interference was prescribed by law; the fact that it pursues one of the legitimate aims laid down in Article 10 § 2 of the ECHR and the fact that it is 'necessary in a democratic society'.
88. The ECtHR appears to accord great significance to the freedom of expression of parliamentarians in general, and to that of members of parliament of the opposition in particular, which justifies, in the case of the latter, a stricter review of the disciplinary sanctions imposed on them.
89. Review of disciplinary sanctions will be limited as regards the manner, timing and place chosen by the parliamentarians for their interventions, on account of the competence enjoyed by the States and their parliaments in that regard.

³ Applications Nos 42461/13 and 44357/13.

This is the first case in which the ECtHR has had to examine the compliance with Article 10 of the ECHR of disciplinary sanctions adopted against parliamentarians on account of the manner in which they had expressed themselves in the parliamentary precinct.

⁴ '1. Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

90. However, that review will be extended as regards the content of comments made by parliamentarians, since the States have very little leeway to regulate such comments.
91. It also seems that, in its review to determine whether the sanction imposed by a parliament is 'necessary in a democratic society', the ECtHR devotes particular attention to whether, in the procedure for the imposition of that sanction, there are effective procedural safeguards, including minimum safeguards, such as the right of the parliamentarian subject to the sanction to be heard.
92. Thus, a disciplinary sanction imposed by a national parliament could be found to be contrary to Article 10 of the ECHR both by reason of a procedural defect (infringement of the rights of the parliamentarian subject to the sanction, failure to state the grounds for the sanction etc.) and by reason of a failure to comply with substantive rules (infringement of the principle of proportionality, the sanction in question is not prescribed by law etc.).
93. In practice, in the judgment in *Karácsony and Others v. Hungary*, cited above, the ECtHR focuses its analysis on whether the restriction of the applicants' freedom of expression was accompanied by effective and adequate safeguards to prevent abuse. Recalling the principle of the autonomy of the Parliament, it distinguishes between two situations in that regard. The first situation involves a parliament manifestly misusing its powers, acting arbitrarily or even in bad faith, by imposing a sanction for which provision is not made in its internal rules or which is unquestionably disproportionate to the alleged disciplinary offence. Such a parliament cannot rely on its autonomy to justify the sanction imposed by it, and the ECtHR can therefore exercise its full power of review in relation to that sanction. The second situation is that of a parliamentarian subject to a sanction to whom the parliamentary procedure offers no basic procedural safeguards to enable the parliamentarian to challenge the disciplinary measure imposed on him or her.
94. The ECtHR concedes that there is a distinction between immediate sanctions, which instantly prevent a parliamentarian from expressing himself or herself, and *a posteriori* sanctions. In the case of the latter sanctions, the procedural safeguards made available must, as a minimum requirement, grant the parliamentarian concerned the right to be heard as part of a parliamentary procedure preceding the

imposition of the sanction.⁵ The procedures for implementing that right to be heard must be tailored to the parliamentary context and seek to ensure that the parliamentary minority is treated fairly and appropriately. Furthermore, any decision *a posteriori* imposing a disciplinary sanction must set out the essential grounds for that sanction, so as to enable the parliamentarian concerned to comprehend the justification for it as well as to allow the public to exercise some scrutiny in that regard.

IV. CONCLUSION

95. As a rule, the members of national parliaments must abide by a certain number of common rules of conduct that are intended to ensure, in one way or another, the smooth functioning of parliamentary work.
96. In order to ensure compliance with those rules, the assembly and/or its president may impose a broad range of disciplinary sanctions, from a simple call to order to temporary exclusion or even the removal from elective office held within the assembly.
97. Although in all Member States the list of grounds on which disciplinary sanctions may be imposed on parliamentarians include, inter alia, compromising the proper functioning of the work of the assembly and various forms of prejudice caused to members of that assembly, comments deemed to be insulting or provocative towards third parties, such as migrants, do not however constitute a ground *per se* in **Belgium** or **France**. In addition, given the lack of relevant information, there is no clear answer as to the applicability of that latter ground in **Greece, Ireland, Italy, Luxembourg, Romania** or **Spain**.
98. In the vast majority of Member States, it is clear from legislation or it is clearly established by the case-law that the powers of the assemblies in respect of their own members and their right to enforce discipline within their walls are absolute and exclusive, and that the courts can only find that they lack the jurisdiction to settle disputes in that regard.

⁵ Referring to Article 41 § 2 of the Charter of Fundamental Rights of the European Union, the ECtHR finds that that right to be heard increasingly appears to be a basic procedural rule in democratic States.

99. However, in accordance with **German** constitutional case-law, the application of legal concepts subject to interpretation which are used in the internal rules of the parliaments, in particular ‘parliamentary order’ and ‘the dignity of the Parliament’, essentially falls within the competence of the President of the Parliament. Nonetheless, judicial review is not limited to the question of whether the sanction was imposed arbitrarily or improperly. In addition, that review must be more robust where a sanction relates not to the conduct of a member of parliament but to the comments made by him or her.
100. It would appear that **Spain** is the only Member State considered in which national constitutional case-law clearly provides for the possibility of annulling a disciplinary sanction imposed on a parliamentarian, both for substantive and procedural errors. Since there is no relevant case-law in the three other Member States that provide for the possibility of judicial remedy in such matters (**Lithuania, Slovakia and Slovenia**), it is not possible to draw conclusions about the scope of judicial review in those States.
101. Lastly, with regard to the case-law of the ECtHR on the review of disciplinary sanctions imposed on parliamentarians, it can be noted that, after identifying that there was interference, the ECtHR refers to the same three criteria to review the compatibility of the sanction being examined with Article 10 of the ECHR as those which it uses in its case-law on the review of the restrictions on freedom of expression: namely, the fact that the interference was prescribed by law; the fact that it pursues one of the legitimate aims laid down in Article 10 § 2 of the ECHR and the fact that it is ‘necessary in a democratic society’.
102. In addition, given the significance that it accords to the freedom of expression of parliamentarians, the ECtHR has developed special rules governing the review that it conducts of the disciplinary sanctions imposed on parliamentarians. Thus, its review will be limited as regards the manner, timing and place chosen by the parliamentarians for the interventions. By contrast, it will be extended as regards the content of comments made by parliamentarians.

SUMMARY TABLES

I. SUBSTANTIVE LAW

A. EXISTENCE OF A SCHEME PROVIDING FOR DISCIPLINARY SANCTIONS IN RESPECT OF PARLIAMENTARIANS

YES	NO
Austria Belgium Bulgaria Croatia Czech Republic Denmark Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Netherlands Poland Romania Slovakia Slovenia Spain United Kingdom PACE	Estonia Portugal Sweden

B. GROUNDS ON WHICH DISCIPLINARY SANCTIONS MAY BE IMPOSED

1. COMPROMISING THE PROPER FUNCTIONING OF PARLIAMENTARY WORK

Valid ground in all the Member States that provide for disciplinary sanctions in respect of parliamentarians and at the PACE.

2. PREJUDICE CAUSED TO MEMBERS OF PARLIAMENT

Valid ground in all the Member States that provide for disciplinary sanctions in respect of parliamentarians and at the PACE.

3. COMMENTS DEEMED TO BE INSULTING OR PROVOCATIVE TOWARDS THIRD PARTIES, SUCH AS, HERE, MIGRANTS

YES	No clear answer, but a priori YES	NO	No relevant information
Austria Bulgaria Croatia Czech Republic Denmark Finland Germany Hungary Latvia Lithuania Netherlands Poland Slovakia Slovenia United Kingdom PACE	Greece Ireland Italy Luxembourg Romania	Belgium France	Spain

C. AVAILABLE SANCTIONS

Censure	Loss of monetary entitlement	Suspension of participation in parliamentary activity	Fine	Other (call to order, withdrawal of speaking rights etc.)
Belgium Bulgaria Czech Republic Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Poland Romania Slovenia United Kingdom	Bulgaria France Germany Greece Hungary Lithuania Luxembourg Poland Slovenia Spain United Kingdom	Belgium Bulgaria Croatia Czech Republic Denmark Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Netherlands Poland Romania Slovakia Slovenia Spain United Kingdom PACE	 Czech Republic Germany Latvia Slovakia United Kingdom	Austria Belgium Bulgaria Czech Republic Denmark Finland France Germany Greece Hungary Italy Lithuania Luxembourg Netherlands Poland Romania Slovakia Slovenia Spain United Kingdom PACE

II. RULES OF PROCEDURE

Procedural safeguards for parliamentarians			
Right to be heard	Access to the file	Assistance from a lawyer	Internal appeal
Belgium Bulgaria Czech Republic Finland France Germany Greece Ireland Italy Latvia Lithuania Luxembourg Poland Romania Slovakia Spain PACE	Bulgaria Czech Republic Finland Latvia Lithuania Poland Slovakia Slovenia Spain	Bulgaria Czech Republic Finland Lithuania (a priori) Slovenia Spain	Belgium Bulgaria Croatia Czech Republic Denmark (partially) Germany Hungary Lithuania Poland Romania (partially) Slovakia (partially) Slovenia Spain

III. JUDICIAL REVIEW

Possibility of bringing proceedings to challenge sanctions imposed for comments made in the exercise of parliamentary duties		
Yes	No	No clear response or no relevant information
Germany Lithuania Slovenia (partially) Spain	Austria Belgium Croatia Finland France Greece Hungary Ireland Italy Latvia Luxembourg Netherlands Poland Romania United Kingdom	Bulgaria Czech Republic Denmark Slovakia PACE