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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW**  
**(CAHDI)**

**27<sup>th</sup> meeting**  
**Strasbourg, 18-19 March 2004**

**DECISIONS BY THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI AND  
REQUESTS FOR CAHDI'S OPINION**

Secretariat Memorandum  
prepared by the Directorate General of Legal Affairs

**Foreword**

At its 837th meeting on 16 April 2003, the Committee of Ministers at Deputies' level decided to communicate Recommendation 1602(2003) on immunities of Members of the Parliamentary Assembly (reproduced in Appendix I) to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 July 2003 (decision in Appendix II). This deadline was subsequently extended so as to allow the CAHDI to formally consider the matter at its 26<sup>th</sup> meeting, 18-19 September 2003. At this meeting, the CAHDI adopted a preliminary opinion on Recommendation 1602 (2003) (reproduced in Appendix A to Appendix IV) and decided to revert to some issues dealt with by the Recommendation at its 27th meeting, in the light of further information.

At its 869th meeting on 21 January 2004, the Committee of Ministers at Deputies' level took note of the preliminary opinion of the CAHDI, invited the CAHDI to continue its consideration of the issues raised in the Assembly recommendation, and of the appropriateness and necessity of adopting a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe, and adopted an interim reply to the Parliamentary Assembly (see decision and reply in Appendix IV).

The contributions submitted by delegations (in the language in which they were submitted) appear in Appendix III.

**Action required**

Members of the CAHDI are invited to take note of the compilation of informative documents on the practice followed by the Parliamentary Assembly as regards immunity of its members (CAHDI (2004) Inf 2 and addendum) and pursue consideration of the issue with a view to a possible further opinion of the CAHDI.

## APPENDIX I

**Recommendation 1602 (2003)<sup>1</sup> of the Parliamentary Assembly  
on Immunities of members of the Parliamentary Assembly**

1. The Parliamentary Assembly refers to its Resolution 1325 (2003) on immunities of members of the Parliamentary Assembly.
2. It recalls that in the light of the ongoing work of the Assembly and its bodies throughout the year and the concept of European parliamentary immunity developed by the European Parliament, the notion "during the sessions of the Assembly" covers the entire parliamentary year.
3. The Assembly points out that according to Article 15.b of the General Agreement on Privileges and Immunities of the Council of Europe, members of the Parliamentary Assembly enjoy, on the territory of all member states other than their own state, exemption from arrest and prosecution. This immunity may only be lifted by the Parliamentary Assembly following a request submitted to it by a competent national authority.
4. The Assembly further recalls that under Article 15 of the general agreement, Representatives to the Assembly and their Substitutes continue to enjoy the immunities secured by this provision when they are no longer members of their national parliament, and do so until their replacement as members of the Assembly.
5. It recommends that the Committee of Ministers invite member states:
  - i. to interpret the immunities accorded under Article 14 of the general agreement in such a way as to include the opinions expressed by Assembly members within the framework of official functions they carry out in the member states on the basis of a decision taken by an Assembly body and with the approval of the competent national authorities;
  - ii. where they have a system of parliamentary inviolability and wish to waive the immunity of a national parliamentarian, who is at the same time a member of the Parliamentary Assembly, to remind the competent authorities that they should also request the Assembly to waive the European immunity of that member which is granted to him or her under Article 15.a of the general agreement;
  - iii. to also remind their authorities that at all stages when parliamentary immunity is waived the presumption of innocence must be maintained;
  - iv. to ask their competent authorities to notify the President of the Parliamentary Assembly in the event of measures taken to detain or prosecute a member of that Assembly.
6. Furthermore, the Assembly invites the Committee of Ministers:
  - i. to inform it of the follow-up given to the measures it has proposed to the governments of the member states as a consequence of the adoption of Assembly Recommendation 1373 (1998) on freedom of movement of and the issue of visas to members of the Parliamentary Assembly of the Council of Europe;

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<sup>1</sup> Assembly debate on 2 April 2003 (13th Sitting) (see Doc. 9718 rev, report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Olteanu).  
Text adopted by the Assembly on 2 April 2003 (13th Sitting).

ii. to recommend again, if necessary, that governments take all appropriate measures to provide members of the Parliamentary Assembly with unimpeded entrance to the member states for official journeys;

iii. to ask member states to acknowledge unilaterally as an official document the laissez-passer issued by the competent Council of Europe authorities to the members of the Parliamentary Assembly and containing details of the holder (name, date and place of birth, nationality, address, photograph), the date of issue and the validity, as well as the relevant extracts from the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2, 1949) and its Additional Protocol (ETS No. 10, 1952), together with other pertinent information.

## APPENDIX II

**Decision by the Committee of Ministers at Deputies' level  
837th meeting – 16 April 2003 Item 3.1**

**Parliamentary Assembly - 2nd Part of the 2003 Session  
(Strasbourg, 31 March – 4 April 2003)**

**Texts adopted**

(CM/Del/Dec(2003)835/3.1, 2003 Session (Provisional compendium of texts adopted),  
CM/AS(2003)1600prov.)

9. concerning Recommendation 1602 (2003) on immunities of Members of the Parliamentary Assembly

- a. decided to bring it to the attention of their governments;
- b. decided to communicate it to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments by 31 July 2003;
- c. decided to communicate it to the Commission for Democracy through Law (Venice Commission) for information and possible comments by 31 July 2003;
- d. invited their Rapporteur Group GR-J to prepare a draft reply for adoption at one of their forthcoming meetings;

## APPENDIX III

**National Contributions****GEORGIA**

In reply to your message, I have the pleasure to inform you that the Georgian Delegation has no objections concerning the Recommendation 1602(2003) of the Parliamentary Assembly of the CoE.

The only issue, which we believe has to be clarified concerns point ii of paragraph 5 of the Recommendation. According to our interpretation of Article 15 of the General Agreement on Privileges and Immunities of the Council of Europe, regime established under Article 15 (a) is to be applied "During the sessions of the Consultative Assembly". In our opinion it would be appropriate to reflect (in case of agreement with our interpretation) the above-stated. We believe it would be of help for the further implementation of the provisions of the Recommendation.

**ITALIE**

*1) Il n'y a pas d'observations sur le point 5-o) relatif à une interprétation extensive de l'article 14 de l'Accord, de manière à inclure sous les immunités les opinions émises par les membres de l'Assemblée Parlementaire dans le cadre de fonctions officielles qu'ils exécutent dans les Etats membres sur la décision prise par un organe de l'Assemblée et en accord avec les autorités nationales compétentes; il s'agit, en effet, de confirmer les immunités en présence des activités accomplies toujours dans l'exercice de fonctions officielles.*

*2) Il n'y a pas d'observations sur le point 5 (ii) relatif à la levée de l'immunité au niveau national et européen parce qu'il s'agit de considérer, en présence des deux statuts des membres comme parlementaires de l'Assemblée et des parlements nationaux, l'autonomie des deux ordres juridiques en matière;*

*3) Il y a accord sur le point 5(iii) e (iv).*

**TURKEY**

With reference to your e-mail dated 24 April 2003, concerning the Recommendation 1602(2003) on immunities of Members of the Parliamentary Assembly, I have the pleasure to inform you that, we consider the Recommendation as a clear and concise text which would facilitate to establish a harmonized system regarding the interpretation and application of European Parliamentary immunity among Member States.

**UNITED KINGDOM**

1. The United Kingdom refers to the request by the Secretariat of the CAHDI for comments on Recommendation 1602(2003) on immunities of Members of the Parliamentary Assembly.

2. The United Kingdom's views on paragraph 5 of the Recommendation which recommends that the Committee of Ministers invite member states to take various actions are:-

(i) In the United Kingdom, interpretation of the General Agreement on Privileges and Immunities of the Council of Europe, and the legislation implementing that Agreement, is a matter for the courts, not the Government, the Parliamentary Assembly or Committee of Ministers. We are therefore not in a position to take a view on the way in which Article 14 of

the General Agreement should be interpreted. We do however have concerns that the Recommendation seeks to expand, rather than interpret, Article 14.

(ii) In the United Kingdom Members of Parliament enjoy immunity from certain civil proceedings, which can very rarely be waived. They do not have immunity from criminal prosecutions. The issue of waiver of European immunity by the Parliamentary Assembly, in addition to waiver of immunity by the national Parliament, under Article 15(a) of the General Agreement is therefore not of practical relevance to the United Kingdom.

(iii) It is clear that the waiver of parliamentary immunity should not affect the presumption of innocence of the individual.

(iv) The requirement that the competent authorities of a member state notify the President of the Parliamentary Assembly in the event of measures being taken in that state to detain or prosecute a member of the Assembly is not provided for in the General Agreement. Under Article 15 of the General Agreement a member of the Assembly may be prosecuted in the UK if he is a UK Representative; he may also be prosecuted if he is a Representative of another state found committing, or just having committed, an offence. In such cases, waiver of immunity is not required from the Parliamentary Assembly and, unless the individual concerned wished the UK authorities to notify the President of the Assembly of his detention or prosecution, it would not be appropriate to do so.

3. As regards paragraph 6 of the Recommendation, and the request that member states acknowledge as an official document the "laissez-passer" issued by the Council of Europe to members of the Parliamentary Assembly, for practical reasons the United Kingdom is unable to accept the "laissez-passer" as a valid travel document instead of a passport. Members of the Parliamentary Assembly travelling in the exercise of their functions are exempt from United Kingdom immigration control and should have little difficulty in entering the UK.

## APPENDIX IV

**Decision by the Committee of Ministers at Deputies' level  
869th meeting – 21 January 2004 Item 10.1**

**Immunities of Members of the Parliamentary Assembly  
Recommendation 1602 (2003) of the Parliamentary Assembly  
Texts adopted**  
(Rec\_1602(2003) and CM/AS(2004)Rec1602 final)

*Decision*

The Deputies adopted the reply to Parliamentary Assembly Recommendation 1602 (2003) on “Immunities of Members of the Parliamentary Assembly”, as it appears in Appendix 13 to the present volume of Decisions<sup>2</sup>.

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<sup>2</sup> See also CM/AS(2004)Rec1602 final.



### **Parliamentary Assembly Recommendation 1602 (2003)**

(Reply adopted by the Committee of Ministers on 21 January 2004 at the 869th meeting of the Ministers' Deputies)

1. The Committee of Ministers takes note of Parliamentary Assembly Recommendation 1602 (2003) on the immunities of members of the Parliamentary Assembly. It has brought it to the attention of the governments of the member states.
2. The Committee of Ministers recognises the importance of the issues referred to in the recommendation. It considers the parliamentary immunity as one of the important guarantees of the independence of the legislative power.
3. The Committee of Ministers has communicated the Assembly Recommendation *inter alia* to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments. It has received the appended preliminary opinion from CAHDI.
4. In its preliminary opinion, the CAHDI considered that the issues dealt with by the Recommendation, in particular paragraphs 2 and 5.i required an in-depth analysis. It reserved its consideration of these issues which it wished to return to at its next meeting in the light of further information. Nevertheless, without prejudice to the further consideration of the substantive points referred to above, the CAHDI noted that, from a procedural point of view, the Committee of Ministers could, if considered appropriate, adopt unanimously a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe. It referred to the Vienna Convention on the Law of the Treaties (Articles 31-33).
5. The CAHDI stressed that, in accordance with Article 6, paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, at all stages when parliamentary immunity is waived the presumption of innocence must be maintained. The Committee of Ministers totally supports this view expressed in subparagraph 5.iii of the Assembly recommendation. In this context, it also stresses the importance of the independence of the judiciary.
6. The CAHDI will continue its consideration of the issues raised in the Assembly recommendation and of the appropriateness and necessity of adopting a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe. The Committee of Ministers will keep the Assembly informed of future developments in this area, and in case of adoption of any further decision on the matter it will be communicated to the Assembly without delay. For this purpose it will elaborate a supplementary reply.
7. Concerning paragraph 6 of the Recommendation, the Committee of Ministers wishes to recall the measures it invited the governments of member States to consider taking in its reply to Assembly Recommendation 1373 (1998) on freedom of movement of and the issue of visas to members of the Parliamentary Assembly of the Council of Europe (see Appendix II). Since problems mentioned in the said Recommendation have not been totally overcome, it has reiterated this invitation to member states and also the request for information on measures taken.

## Appendix A

### **Preliminary opinion of the Committee of Legal Advisers on Public International Law (CAHDI) on Parliamentary Assembly Recommendation 1602 (2003) on immunities of members of the Parliamentary Assembly**

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 26th session in Strasbourg, 18-19 September 2003. The agenda included an item on « Decisions of the Committee of Ministers concerning the CAHDI and request for CAHDI's opinion».
2. In the framework of this item, pursuant to the Committee of Ministers' decision at their 837th meeting (Strasbourg, 16 April 2003), the CAHDI examined Parliamentary Assembly Recommendation 1602 (2003) on immunities of Members of the Parliamentary Assembly.
3. In accordance with its specific terms of reference, the CAHDI concentrated on what it considered to be issues of public international law.
4. The CAHDI considered that the issues dealt with by this Recommendation, in particular paragraphs 2 and 5.i required an in depth analysis which it could not carry out during the present meeting, and therefore it reserved its consideration of these issues and to return to them at its next meeting in the light of further information.
5. However, in order to meet the request of the Committee of Ministers, the CAHDI wished to provide it with the following preliminary considerations.
6. The CAHDI recalls the relevant provisions of the Vienna Convention on the Law of the Treaties, including Articles 31-33 and in particular Article 31 that provides that
  - 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
  - [...]*
  - 3. There shall be taken into account, together with the context:*
    - (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
    - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*
7. Without prejudice to the further consideration of the substantive points referred to in paragraph 4 above, the CAHDI notes that, from a procedural point of view, the Committee of Ministers could, if considered appropriate, adopt unanimously a position concerning the interpretation of the General Agreement on Privileges and Immunities of the Council of Europe. The effect of such a position would have to be seen in the light of the above-mentioned provisions.
8. Concerning paragraph 5, iii of the Recommendation, the CAHDI stresses that, in accordance with Article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, at all stages when parliamentary immunity is waived the presumption of innocence must be maintained.

## *Appendix B*

### **Reply to Parliamentary Assembly Recommendation 1373 (1998) Freedom of movement of and the issue of visas to the members of the Parliamentary Assembly**

#### *Decisions*

#### The Deputies

1. took note of the possible difficulties encountered by members of the Parliamentary Assembly in obtaining visas speedily to enable them to carry out their duties on official journeys to the territories of member States;
2. invited the governments of member States to consider taking one or more of the following measures, in conformity with their national legislation, to ensure that members of the Parliamentary Assembly on official journeys benefit by full entry facilities on the territory of member States:
  - i. according priority to or at least speedy treatment of requests for visas from members of the Parliamentary Assembly in connection with their official duties, in particular when supported by a Council of Europe service card;
  - ii. granting long-term multiple entry visas whenever possible;
  - iii. when the granting of long-term multiple visas is not possible, according priority to the speedy processing of requests for single entry visas;
  - iv. authorising authorities at ports of entry, in cases of urgency when it has not been possible for the member of the Parliamentary Assembly to obtain a visa prior to departing on an official journey, and when notified of such impossibility by the appropriate domestic authorities, to grant the appropriate visa exceptionally at the port of entry;
  - v. granting visas free of charge wherever possible;
3. asked the Secretary General to transmit the present decision to member States and to inform the Committee of Ministers in due course of the measures taken to implement it;
4. informed the Parliamentary Assembly of the above decisions, taken in reply to its Recommendation 1373 (1998).