

PRELIMINARY OPINION ON 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.