

OPINION OF THE CAHDI

ON RECOMMENDATION 2095 (2016) OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE – “PARLIAMENTARY IMMUNITY: CHALLENGES TO THE SCOPE OF PRIVILEGES AND IMMUNITIES ENJOYED BY MEMBERS OF THE PARLIAMENTARY ASSEMBLY”

1. On 6 July 2016, the Ministers’ Deputies at their 1262nd meeting agreed to communicate *Recommendation 2095 (2016) of the Parliamentary Assembly of the Council of Europe (PACE) on “Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly”* to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by mid-September 2016¹.
2. The CAHDI examined the above-mentioned Recommendation at its 52nd meeting (Brussels, Belgium, 15-16 September 2016) and made the following comments concerning those aspects of Recommendation 2095 (2016) which are of particular relevance to the Terms of Reference of the CAHDI.
3. From the outset, the CAHDI recalls its Opinion on *Recommendation 2083 (2016) of the Parliamentary Assembly of the Council of Europe (PACE) on “Introduction of sanctions against parliamentarians”* adopted on 4 March 2016 during its 51st meeting. The CAHDI underlines that the comments on the main legal arguments concerning the scope of the privileges and immunities enjoyed by members of the PACE made in its Opinion on Recommendation 2083 are equally relevant for the present Recommendation 2095. Furthermore, the CAHDI recalls the Reply to Parliamentary Assembly *Recommendation 2083 (2016) on “Introduction of sanctions against parliamentarians”* adopted by the Committee of Ministers on 6 July 2016 at its 1262nd meeting².
4. As the PACE underlined in paragraphs 1 and 2 of its Recommendation 2095, the CAHDI notes that the scope of privileges and immunities enjoyed by the members of the PACE is governed by Article 40³ of the *Statute of the Council of Europe*, as further elaborated in the *General Agreement on Privileges and Immunities of the Council of Europe (GAPI)* and its *Protocol*. Furthermore, the CAHDI reiterates that the rights of members of the PACE when seeking to attend an official meeting in a member State, in particular in relation to the freedom of movement, are defined in Article 13⁴ of the GAPI. The immunities enjoyed by PACE members are defined in

¹ The Ministers’ Deputies specifically indicated in their decision that they “agreed to communicate it [Recommendation 2095 (2016)] to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 15 September 2016. However, taking into account that the 52nd meeting of the CAHDI will take place on 15 and 16 September, it was agreed to send the CAHDI opinion to the Secretariat of the Committee of Ministers on 19 September 2016.

² See the text at the following [link](#).

³ **Article 40 (ETS No.1):** “The Council of Europe, representatives of members and the Secretariat shall enjoy in the territories of its members such privileges and immunities as are reasonably necessary for the fulfilment of their functions. These immunities shall include immunity for all representatives to the Consultative Assembly from arrest and all legal proceedings in the territories of all members, in respect of words spoken and votes cast in the debates of the Assembly or its committees or commissions.”

⁴ **Article 13 (ETS No.2):** “No administrative or other restriction shall be imposed on the free movement to and from the place of meeting of Representatives to the Consultative Assembly and their substitutes. Representatives and their substitutes shall, in the matter of customs and exchange control, be accorded:

- a. by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official duty;
- b. by the governments of other members, the same facilities as those accorded to representatives of foreign governments on temporary official duty.”

particular in Articles 14⁵ and 15⁶ of the GAPI. Moreover, Article 3⁷ of the *Protocol* to the GAPI extends the immunities defined in Article 15 of the GAPI to the representatives of the PACE and their substitutes attending or travelling to or from meetings of the PACE committees or sub-committees.

5. The CAHDI reiterates also that the Committee of Ministers of the Council of Europe has invited on several occasions the governments of member States to adopt specific measures in order to fully implement the above mentioned privileges and immunities enjoyed by the PACE members. For instance, in its Reply to PACE *Recommendation 1373 (1998) on freedom of movement and the issue of visas to members of the Parliamentary Assembly of the Council of Europe* adopted on 20 October 1998 at the 645th meeting, the Committee of Ministers invited the governments of member States to consider taking a series of measures, in conformity with their national legislation, to ensure that members of the Parliamentary Assembly on official journeys benefit from full entry facilities on the territory of member States⁸. These measures were recalled by the Chair of the Committee of Ministers in his reply to the written Question No. 501 by Lord Russell-Johnston: "Visa requirements for members of the Assembly attending Assembly committee meetings". The CAHDI further notes that since then the Committee of Ministers has replied to the PACE on different occasions on this issue (see for instance the Reply adopted at the 869th meeting of the Committee of Ministers on 21 January 2004⁹ and at its 911th meeting on 12 January 2005¹⁰ in relation to the PACE Recommendation 1602 (2003) on "Immunities of members of the Parliamentary Assembly). The most recent reply has been the *Reply of the Committee of Ministers to the Parliamentary Assembly Recommendation 2083 (2016) on "Introduction of sanctions against parliamentarians"* adopted on 6 July 2016¹¹.

6. The CAHDI also reiterates that international law grants States full sovereignty over their territory. This implies that States can also freely decide, in conformity with their obligations under international law, on the entry of foreign nationals into their territory.

⁵ **Article 14 (ETS No.2):** "Representatives to the Consultative Assembly and their substitutes shall be immune from all official interrogation and from arrest and all legal proceedings in respect of words spoken or votes cast by them in the exercise of their functions".

⁶ **Article 15 (ETS No.2):** "During the sessions of the Consultative Assembly, the Representatives to the Assembly and their substitutes, whether they be members of Parliament or not, shall enjoy:

- a. on their national territory, the immunities accorded in those countries to members of Parliament;
- b. on the territory of all other member States, exemption from arrest and prosecution.

This immunity also applies when they are travelling to and from the place of meeting of the Consultative Assembly. It does not, however, apply when Representatives and their substitutes are found committing, attempting to commit, or just having committed an offence, nor in cases where the Assembly has waived the immunity."

⁷ **Article 3 (ETS No.10):** "The provisions of Article 15 of the Agreement shall apply to Representatives to the Assembly, and their Substitutes, at any time when they are attending or travelling to and from, meetings of committees and sub-committees of the Consultative Assembly, whether or not the Assembly is itself in session at such time".

⁸ In its reply to PACE Recommendation 1373 (1998) on freedom of movement and the issue of visas to members of the Parliamentary Assembly of the Council of Europe, the Committee of Ministers "[...] 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 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 visas exceptionally at the port of entry;
- v. granting visas free of charge whenever possible [...]."

Reply adopted by the Committee of Ministers on 20 October 1998 at the 645th meeting of the Ministers' Deputies: See the full text at the following [link](#).

⁹ See the text at the following [link](#).

¹⁰ See the text at the following [link](#).

¹¹ See the text at the following [link](#).

7. The CAHDI considers that many political and legal issues are raised by the privileges and immunities of parliamentarians and their corresponding rights and obligations, which are governed by the applicable Council of Europe treaties. In relation to paragraph 4 of Recommendation 2095, the CAHDI reiterates its consideration that an efficient implementation of the rules currently into force would solve most of the issues highlighted by the PACE. In this respect, the CAHDI recalls that the Committee of Ministers in its recent *Reply to the Parliamentary Assembly Recommendation 2083 (2016) on "Introduction of sanctions against parliamentarians"* adopted on 6 July 2016 "reiterates its invitation to member States to honour their commitments" (see in particular paragraph 3 of the Reply¹²). The decision to further call "member States to act in strict compliance with their obligations" under the above-mentioned rules as requested by the PACE rests with the Committee of Ministers.

¹² "The Committee of Ministers recalls that it has on several occasions invited the governments of member States to adopt specific measures in order to fully implement the above-mentioned privileges and immunities. For instance, in its reply to Parliamentary Assembly Recommendation 1373 (1998) on "Freedom of movement and the issue of visas to members of the Parliamentary Assembly of the Council of Europe", it invited the governments of member States to consider taking a series of measures, in conformity with their national legislation, to ensure that members of the Parliamentary Assembly on official journeys benefit from full entry facilities on the territory of member States. The Committee reiterates its invitation to member States to honour their commitments".