

[emphasis added]

- Resolution 1325 (2003)

8. Concerning parliamentary inviolability, guaranteed by Article 15 of the general agreement, **the Assembly emphasises that the procedure for waiving parliamentary immunity at the Parliamentary Assembly is separate from that of national parliaments.** The Assembly further considers that the general principles of European parliamentary immunity, which were developed after the adoption of the General Agreement, should be taken into account for the purpose of defining the scope of its Article 15, in so far as they are compatible with the nature of the Assembly and its practice.

- Recommendation 1602 (2003)

5. It recommends that the Committee of Ministers invite member states:

...

5.2 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;**

- Explanatory report

27. ... Inviolability is intended to guard against situations where detention or laying of charges is manipulated in order to remove parliamentarians from active office and, by this expedient, parliament is wrongfully denied the co-operation or assistance of its members. Inviolability under Article 15 will only be granted if there is a link between the offences attributed to the parliamentarian and his/her political activities. ... **It follows that inviolability does not seek to establish a field of exemption for possible unlawful acts committed by a parliamentarian, but rather to obtain an assurance that a criminal charge does not conceal a political or party attempt to remove a member from parliament.**

46. The words “session of the Assembly” also appear in Article 25 (b) of the Statute of the Council of Europe, which specifies, “No Representative shall be deprived of his position as such during a session of the Assembly, without the agreement of the Assembly”. **It is the Assembly’s standing practice to interpret the terms “during a session of the Assembly” as covering the parliamentary year from the end of January to the end of the following January.** This interpretation also corresponds to the Assembly’s practical needs, since when the General Agreement was concluded in 1949 and its additional Protocol in 1952, the Assembly held respectively one and two sessions per year. Its major committees did not meet each month and the intervals between the meetings of the Assembly’s steering bodies (the Bureau and the Standing Committee) were then much longer than is currently the case. Prior to 1989 it was very rare for the Assembly to observe national elections or carry out on-the-spot visits. **Today, however, the Assembly and its various organs are active virtually all year round.**

54. ... **Article 15 of the General Agreement should also be applied to acts with which a member of the Parliamentary Assembly is charged before the term of office in the Assembly.** The decisive argument is that the practical situation for the Parliamentary Assembly is the same if an Assembly member is prosecuted or arrested for acts he is charged before or during the term of office in the Assembly. In both cases the member will not be (or risks being not) “available” for Assembly activities. **That is why the Assembly should have the occasion in both cases to examine whether the conditions for a waiver of the immunity are fulfilled or not.**

68. ... It should be remembered that **the “European” immunity of an Assembly member is independent of the immunity he or she enjoys at national level and, as stated above, this serves to ensure that the work of the Assembly is not hampered.** During the discussions in the Committee on

Rules of Procedure and Immunities some members stressed that the mandate of members of national delegations to the Parliamentary Assembly derived from national parliaments. Handling the same immunity case twice, that is by the national parliament and the Assembly, could raise complications. While admitting the necessary and close links between the Assembly and the national parliaments of member States, it has to be borne in mind that **Article 15 of the General Agreement explicitly stipulates that the immunities are granted to members of the Assembly, whether they be members of parliament or not. This is a most important argument in favour of the independence of the European parliamentary immunity in comparison to the national one.**

127. With respect to member States which have a system of parliamentary inviolability (Article 15 of the General Agreement) **there is a need to remind the national authorities that in the case of a parliamentarian belonging to the Assembly who is accused of a wrongful act, both national and European immunity should be waived.**

- Reply from the Committee of Ministers

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).**