

[emphasis added]

- Resolution 1490 (2006)

2. The Assembly recalls that the protection granted to Assembly members by Article 40 of the Statute of the Council of Europe ("London Treaty") (ETS No. 1), Articles 14 and 15 of the General Agreement on the Privileges and Immunities of the Council of Europe (ETS No. 2) and Article 3 of its Protocol (ETS No. 10) is part of a specific system of European immunity which is independent from any national immunities an Assembly member may enjoy. **The autonomous character of the Council of Europe immunity is justified by the fact that the Assembly and its members have, independently from parliaments of the member states, a mandate to carry out specific parliamentary functions arising from the application of the London Treaty of 5 May 1949.**

3. One feature of the Council of Europe's institutional system is that the immunities of Assembly members are valid during the entire parliamentary year of the Assembly. It has always interpreted the terms "during the sessions" in Article 15 of the General Agreement and "during a session" in Article 25.b of the Statute as covering the parliamentary year.

8. It resolves to interpret Article 15.a as follows: **regardless of the national regime of immunity, Assembly Representatives or Substitutes shall be protected against prosecution and arrest in the exercise of their functions as Assembly members** or when travelling on Assembly business, **whether this is inside or outside of their national territory. If they are not active within this meaning or not travelling on Assembly business, the national regime shall apply within their country.**

- Explanatory report

18. Moreover, the words "during a session" are contained in Article 25.b of the Statute of the Council of Europe. 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 January the following year. This interpretation also corresponds to the Assembly's practical needs, as the Assembly held respectively one and two sessions per year when the General Agreement was concluded in 1949 and its additional Protocol in 1952. 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 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.**

31. The Legal Service (*Servizio del contenzioso diplomatico e dei trattati*) of the Italian Ministry of Foreign Affairs has in an aide-mémoire of 28 September 2004 set out that:

- **the immunity of members of the Parliamentary Assembly is an instrument to allow the Assembly's functioning; it is distinct and independent from possible national immunity and thus at the sole disposal of the Assembly;**

...

42. On this basis the Rapporteur proposes that Article 15, sub-paragraph a. of the General Agreement should be read in the context of the second paragraph of this provision ("This immunity also applies when they are travelling..."). **This means that - whatever the national regime of immunity is - an Assembly member is always protected from prosecution and arrest when travelling on Assembly business or otherwise being active as an Assembly member, whether this is inside or outside his country. If he is not active within this meaning or not travelling on Assembly business, then the national immunity regime applies within his own country.** This interpretation is justified by the consideration that a member can otherwise not fulfil his duties as Representative or Substitute of the Parliamentary Assembly. It does therefore not mean that an Assembly member has an absolute

immunity within his own country. In any case the Assembly would always, at the request of a national authority, rapidly lift the immunity of a member if this was justified.

50. In this connection **the Rapporteur considers it important to draw attention to the need for a waiver of members' European (Council of Europe) parliamentary immunity by the Assembly, before their liberty to travel to and from Assembly and committee meetings and to be otherwise active for the Assembly may be restricted.**

51. **The Council of Europe immunity is autonomous in respect to the national parliamentary immunity of a member** (see the judgment of the Court of Justice of the European Communities, *Wybot vs France*, 149/85, coll. 1986, p.2403). The autonomous character is illustrated by the fact that, **according to the General Agreement and its Additional Protocol, the immunities are applicable to Assembly members who no longer have a national parliamentary mandate.**

52. Furthermore, **the autonomous nature of the European immunity is accentuated by the provisions of the second paragraph of Article 15 of the General Agreement.** This paragraph, together with Article 3 of the Additional Protocol of 1952, protects the free movement of Assembly members (travelling to and from the place of Assembly plenary sittings and Assembly committee and sub-committee meetings) and defines such prerogatives as "this immunity". It is an absolute immunity based on international law. It applies to all Assembly members, even if they do not enjoy immunity from arrest under their national legislation. **The second paragraph of Article 15 also contains a clause for in flagranti offences. It would not be necessary if the European immunity was not independent. This European immunity is interpreted by the Parliamentary Assembly, which alone has the competence to lift it (see Article 15), if so requested.**