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Immunities of members of the Parliamentary Assembly

Reply to Recommendation[1]: Recommendation 1602 (2003)
Committee of Ministers

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 recognizes 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 preliminary opinion from CAHDI (see Appendix 1).

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 to 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 2). 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.

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1. Adopted at the 869th meeting of the Ministers' Deputies (21 January 2004).

Appendices

Appendix 1 – 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 on 18 and 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 planned 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 to 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 II – 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).