



Resolution 1325 (2003)¹

Immunities of Members of the Parliamentary Assembly

Parliamentary Assembly

1. The Parliamentary Assembly stresses that parliamentary immunity is one of the most ancient parliamentary guarantees in Europe. Its purpose is to preserve the integrity of parliaments and to safeguard the independence, but not the impunity, of its members in exercising their office. Immunity provides specific protection against the accusations to which parliamentarians are more exposed than other citizens. Moreover, in new democracies, in the initial stages of constitutional development the presence of immunities is highly important, particularly when the independence of the judiciary is still being consolidated.
2. The Assembly recalls that it was the first international parliamentary institution in Europe to incorporate provisions in its Rules of Procedure for waiving the immunity of its members, giving practical expression to Article 40 of the Statute of the Council of Europe and the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2, 1949) and its Additional Protocol (ETS. No. 10, 1952).
3. It notes that it has received very few requests to waive the immunity of members and also that few of its members have asked it to confirm their immunity in respect of proceedings against them at national level. It concludes that, on the one hand, knowledge of the system of immunity for Assembly members is lacking and, on the other hand, certain notions of the system are subject to narrow interpretations in member states.
4. It points out that the provisions relating to parliamentarians in the General Agreement on Privileges and Immunities of the Council of Europe and its Additional Protocol and those of the Protocol on the privileges and immunities of the European Communities of 8 April 1965 are identical. Furthermore, the European Parliament has developed a concept of European parliamentary immunity and disposes of extensive case-law concerning the practical application of that immunity. The Assembly notes that negotiations are currently taking place on the status of members of the European Parliament, which will also include immunities.
5. As regards non-accountability/non-liability (parliamentary privilege), provided for in Article 14 of the General Agreement on Privileges and Immunities of the Council of Europe, the Assembly believes that such immunity should include the opinions expressed by the Assembly's Representatives and Substitutes when carrying out official functions in member states with the approval of the competent national authorities. It also believes that the possibilities of sanctioning Assembly members (Rule 20 of the Rules of Procedure of the Parliamentary Assembly) should be reinforced in the event of their expressing opinions containing defamation, insults or slander.
6. The Assembly also notes that in its judgment of 17 December 2002 in the case of *A. v. the United Kingdom* (Application No. 35373/97), the European Court of Human Rights stated, inter alia, that "In a democracy, Parliament or such comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein" and that "a rule of parliamentary immunity, which is consistent with and reflects generally recognised rules within signatory states, [of the European Convention on Human Rights], the Council of Europe and the European Union, cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court as embodied in Article 6 paragraph 1 [of the European Convention on Human Rights]".

1. Assembly debate on 2 April 2003 (13th Sitting) (see [Doc. 9718](#) rev., report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Olteanu). Text adopted by the Assembly on 2 April 2003 (13th Sitting).



7. The Assembly notes that in another judgment of 30 January 2003 (*Cordova v. Italy* (No. 2) – Application No. 45649/99), the European Court of Human Rights noted that the statements of a parliamentarian, having been made during an electoral meeting and thus outside a legislative assembly, were not related to the performance of parliamentary duties in the strict sense. In the Court's opinion, the absence of an obvious link with any kind of parliamentary activity meant that the notion of proportionality between the aim pursued and the means employed had to be interpreted narrowly. That was particularly true where restrictions on the right of access had resulted from a resolution passed by a political body.

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. A national authority lodging a request to waive the immunity of a Parliamentary Assembly member in respect of their own national parliament must also therefore lodge a request with the Assembly. Moreover, the notion "during the sessions of the Assembly" should be defined. 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.

9. Like other international parliamentary institutions, the Parliamentary Assembly will have to incorporate a provision in its Rules of Procedure whereby its members may request the Assembly to confirm their European immunity in respect of national proceedings.

10. Finally, the Assembly believes that Rule 64 of its Rules of Procedure must be more precise where the handling of requests to waive immunity is concerned and be adapted to new developments.

11. Consequently, the Assembly decides to amend Rule 64 of its Rules of Procedure as follows: "64.1. The members of the Assembly enjoy the privileges and immunities provided for in the General Agreement on Privileges and Immunities of the Council of Europe (of 2 September 1949) and its Additional Protocol (of 6 November 1952). These immunities are granted in order to preserve the integrity of the Assembly and to safeguard the independence of its members in exercising their European office. 64.2. Any request addressed to the President by a competent authority of a member state for the waiver of immunity of a Representative or Substitute as guaranteed under Article 15 of the General Agreement shall be announced in a plenary sitting or Standing Committee meeting and then referred to the Committee on Rules of Procedure and Immunities. 64.3. The Committee shall immediately consider the request. It may issue an opinion on the competence of the requesting authority and on the formal admissibility of this request. It shall not make any examination of the merits of the case in question. In particular, the Committee shall not, under any circumstances, pronounce on the guilt or otherwise of the member, or on whether or not the opinions or acts attributed to him or her justify prosecution. At the earliest opportunity, it shall hear the member concerned by the request, or another member of the Assembly representing the former, who may submit any document which he or she deems relevant. It may ask the competent national authorities to provide it with any information and details it considers necessary to determine whether or not immunity should be waived. The report of the Committee shall conclude with a draft resolution for the retention or the waiver of immunity. No amendment to that decision will be admissible. 64.4. The report of the Committee shall be the first item of business of the Assembly on the first sitting day after the report has been tabled. The debate on the report shall be confined to arguments for or against the waiver of immunity. In the event of the request to waive immunity relating to more than one accusation, each of these may be the subject of a separate decision. 64.5. The President shall immediately communicate the decision of the Assembly to the authority which submitted the request. 64.6. In the event of a member of the Assembly being arrested or deprived of freedom of movement in supposed violation of his or her privileges and immunities, the President of the Assembly may take the initiative of confirming the privileges and immunities of the member concerned, where applicable following consultation of the competent Assembly bodies. A member may petition the President to defend his or her immunity and privileges. At the request of the President, the Bureau may, subject to ratification by the Assembly, refer the case to the relevant committee."

12. The Assembly also invites national parliaments and the competent national authorities to take into account, for interpreting the concepts of non-accountability/non-liability and inviolability, as well as the corresponding provisions of the General Agreement on Privileges and Immunities of the Council of Europe the criteria appended to the present report.

13. It decides that the new provisions shall enter into force following their adoption.

14. The Assembly, referring to Article 40 of the Statute, which specifies that “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”, invites the Secretary General of the Council of Europe to take the necessary measures with a view to the introduction of a laissez-passer for Council of Europe staff which is officially recognised by the member states.