Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1490 (2006)[1]

Interpretation of Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe

Parliamentary Assembly

1. The Parliamentary Assembly refers to its Resolution 1325 (2003) and Recommendation 1602 (2003) on immunities of members of the Parliamentary Assembly which underlined that 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.

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.

4. The Assembly recalls that, since 1952, the provisions governing the immunities of members of the European Parliament (Protocol on the Privileges and Immunities of the European Communities of 1965 and prior texts) and of the Parliamentary Assembly of the Council of Europe are identical. However, the European Parliament (EP), in a resolution of 23 June 2005, called upon the European Union (EU) member states to review the 1965 Protocol in respect of the provisions relating to members of the EP and to take the statute for members of the EP, approved on 3 and 4 June 2003, as a model. The Assembly hopes that the EU governments will endorse these proposals and that they will be adopted at the next EU Intergovernmental Conference. Once the new EU protocol has entered into force, it would be useful for the Assembly to request that the General Agreement on the Privileges and Immunities of the Council of Europe and its Additional Protocol be revised and updated, in so far as Assembly members are concerned.

5. On the basis of the existing 1965 provisions, the EP has developed a rich practice concerning the scope of these immunities. Its recent immunity practice shows that national authorities have not correctly interpreted European immunities in important cases concerning the participation of members of the EP in demonstrations or their freedom of movement. Some EP members have even been stripped of their national parliamentary immunity when in their home countries. On 15 November 2005, the EP adopted a resolution on a possible infringement of the Protocol on the Privileges and Immunities of the European Communities by a Member State (P6_TA-(2005) 0426).

1. Text adopted by the Standing Committee acting on behalf of the Assembly on 17 March 2006 (see Doc.10840, report of the Committee on Rules of Procedure and Immunities, rapporteur: Mr Jurgens).

6. In its Resolution 1325 (2003), the Assembly agreed that the EP's practice should also form the basis for the interpretation of Article 15 of the General Agreement and, in particular, of its sub-paragraph a concerning immunities of Assembly members on their national territory. Furthermore, in its Recommendation 1602 (2003),the Assembly invited the Committee of Ministers to take certain action with regard to the interpretation and application of Articles 14 and 15.a of the General Agreement.

7. However, the Committee of Ministers has not taken the proposed follow-up action on Recommendation 1602 (2003). As far as can be seen, the national courts which had to apply the immunity regime of the Parliamentary Assembly have not adhered to the Assembly's concept developed in Resolution 1325 (2003), but have given preference to a literal interpretation of Article 15.a of the General Agreement, while not taking into account this provision in its entirety. In these circumstances, the Assembly has reviewed its position regarding Article 15.a.

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.

9. The Assembly also considers that it is appropriate for the relevant Assembly organs, when examining requests for the waiver of immunity and for the defence of immunity of its members, to question whether the competent national authorities have respected the European Convention on Human Rights as interpreted by the European Court of Human Rights and other relevant Council of Europe legal instruments and texts which the respective countries have ratified or accepted. The Assembly should express its concern when Council of Europe norms have been obviously disregarded in respect of one of its members.

10. The Assembly recalls that in the reply to Recommendation 1602 (2003), the Committee of Ministers invited the member states, where national legislation permits, to acknowledge unilaterally as an official document the laissez-passer issued to the Assembly members by the competent Council of Europe authorities.

11. Consequently the Assembly decides to:

11.1. add the following paragraph after paragraph 6 in Rule 64 of the Assembly's Rules of Procedure:

a. When dealing with requests for the waiver of the Council of Europe immunity, or with requests to defend that immunity of an Assembly member, the competent Assembly bodies shall interpret Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe as follows. Assembly Representatives or Substitutes are immune from 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.

b. The terms 'in the exercise of their functions' include all official duties discharged by Assembly Representatives and Substitutes in the member states on the basis of a decision by a competent Assembly body and with the consent of the appropriate national authorities.

c. In case of doubt, the Bureau of the Assembly shall decide if Assembly members' activities took place in the exercise of their functions.";

11.2. invite the Bureau of the Assembly to take measures aimed at:

11.2.1. reinforcing the legal value of the laissez-passer issued by the competent Council of Europe authorities to members of the Parliamentary Assembly;

11.2.2. making more member states acknowledge the laissez-passer as an official document;

11.2.3. completing the information in the laissez-passer by adding the contents of paragraph11.1 above and its translation into the three working languages of the Assembly.

12. The Assembly decides that the new provision shall enter into force upon the adoption of this resolution.