Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2126 (2016)[1]

The nature of the mandate of members of the Parliamentary Assembly

Parliamentary Assembly

1. The Statute of the Council of Europe (ETS No. 1) and the Rules of Procedure of the Parliamentary Assembly, which define and govern the competences of Assembly bodies and parliamentary procedures, say nothing about the status of members of the Assembly and the nature of their mandate, and merely specify that the members of the Assembly are elected within the national or federal parliament or appointed from among their members (Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure).

2. Since international organisations are instruments of co-operation between States, it is generally recognised that their statutes govern relations between the organisation and its member States. It is therefore clear that, because of the actual legal nature of the instrument founding the Council of Europe, the members of the Assembly are considered not as individual "subjects of law", but in terms of their membership of one of the Organisation's two statutory bodies: as "Representatives to the Assembly", they enjoy the protection of a specific European statutory and treaty-based system of immunities.

3. The Rules of Procedure, supplemented by complementary texts, also comprise several provisions relating to the guarantees and rights, but also obligations, governing the exercise of their European mandate.

4. The members of the Assembly sit as members of a national delegation, but also, where the great majority of them are concerned, in respect of a political group to which they have declared their affiliation. As national elected representatives, parliamentarians are mandated by their electorate to act in the general interest, albeit with respect for the political values professed by their political party. As members of the Assembly, they undertake to adhere to the fundamental objectives and principles of the Council of Europe (Rule 6.2 of the Rules of Procedure) and, to the extent that they are affiliated to one of the five political groups of the Assembly, to promote the group's objectives, values and principles.

5. In accordance with the principle of representative democracy, in Europe national parliamentarians have a representative mandate which has the distinction of being general, free and irrevocable, and implies freedom of action, opinion and expression and an individual right to vote. The constitutional or legislative provisions governing the functioning of the parliamentary system in Council of Europe member States highlight the non-binding or conditional nature of the mandate; in other words, from a legal viewpoint, elected representatives enjoy absolute independence vis-à-vis both their electorate and their party. Parliamentarians are considered able to exercise their mandate freely and not be bound by any undertakings given before their election or instructions received during their mandate: they are not bound by instructions from their voters and are not obliged to follow the instructions of their party.

6. In theory, parliamentarians are free to make their own decisions, as expressed through the votes they cast, and are not obliged to support the position of their political party or group in parliament, honour their pledges to it or vote as their parliamentary group directs. In parliamentary practice, the principle that mandates are independent and irrevocable is clearly waning in the face of party discipline and compliance with voting

1. *Assembly debate* on 23 June 2016 (26th Sitting) (see Doc. 14077, report of the Committee on Rules of Procedure, Immunities and Institutional Affairs, rapporteur: Ms Nataša Vučković). *Text adopted by the Assembly* on 23 June 2016 (26th Sitting).

instructions, an inescapable feature of how parliamentary institutions operate today. The importance of the party system rests firstly, at the pre-election stage, on the process of nominating candidates and secondly, after the election, on the freedom of parties and groups to expel members whose conduct is disloyal or damaging to the party or group concerned.

7. There is, then, a kind of "imperative mandate" that currently thrives in parliamentary institutions, through the threat of suspension or expulsion from one's political party or group, with the pressure placed on parliamentarians leading them to resign or face sanctions.

8. The Assembly points out that, notwithstanding the provisions of Rule 6 of its Rules of Procedure ensuring compliance with the principles of fair political representation and gender equality, the composition of national delegations and the appointment or replacement of their members are a matter for national parliaments, in accordance with their internal procedures. The same applies to the participation of members in sessions of the Assembly or meetings of its committees.

9. The Assembly notes that, in the last few years, irregularities have occurred in Assembly delegations, often bringing to light gaps and shortcomings in the rules of procedure of the national parliaments concerned. In particular:

9.1. the rules of procedure of national parliaments have sometimes been questioned for the way that they can serve as a legal front for measures imposing a disguised sanction founded on a political motive, particularly where delegation members are replaced on the pretext of individual resignations or an overall renewal of membership following elections;

9.2. the rules of procedure of national parliaments are reported to have been misused to restrict travel or prevent the participation of a delegation member in a part-session or an Assembly committee meeting.

10. It also expresses its profound concern at the serious infringements of the independence and freedom of expression of some of its members or now former members, who have been the target of disguised sanctions on the part of the parliament or their national political party.

11. In this connection, the Assembly firmly points out that the European Court of Human Rights (the Court) attaches the utmost importance to freedom of expression in the context of political debate, and affords enhanced protection to it, by establishing in its case law the principle of the free expression of parliamentarians as a *sine qua non* for their independence in the discharge of their mandate. The Court considers it essential, in a democratic society, to "defend freedom of political debate, which is at the very core of the concept of a democratic society".

12. Moreover, the Assembly considers that although, at national level, party discipline is a prerequisite for stable parties and party coalitions and the effectiveness of their policy, such considerations are less relevant when it comes to promoting within the Parliamentary Assembly the aims and basic principles of the Council of Europe and collaborating "sincerely and effectively" in the promotion of "ideals and principles which are the [Europeans'] common heritage".

13. The Assembly considers that its members should enjoy a status comprising recognition of minimum guarantees in the exercise of their European mandate, and that there is a need to promote a certain number of principles based on a proper balance between freedom of opinion and parliamentary votes and respect for the political obligations that flow from membership of a political party or group. It calls on national parliaments and their delegations to the Assembly to recognise and take due account of the following general principles, which should regulate the conditions under which the Assembly mandate is exercised:

13.1. with regard to the guarantees and rights enjoyed by Assembly members:

13.1.1. Assembly members exercise their mandates freely and independently; they are not bound by any instructions from their delegation, their national political party or their political group in the Assembly;

13.1.2. Assembly members express their opinions freely, whether through their statements, speeches or votes, in all their activities in the Assembly and its various bodies, while complying with Rule 22 of the Rules of Procedure and rules of conduct in the Assembly;

13.2. with regard to the duties of Assembly members:

13.2.1. Assembly members shall act in accordance with the Rules of Procedure and rules of conduct; they participate in a responsible and constructive manner in the Assembly's work;

13.2.2. Assembly members have a duty of accountability to their delegation, their national political party and their political group in the Assembly; they act in compliance with the principles of transparency, honesty, integrity and trust.

14. Recalling Resolution 1640 (2008) on the use by Parliamentary Assembly members of their dual parliamentary role – both national and European, the Assembly urges national parliaments to review their rules of procedure and their practice relating to the participation of delegations in Assembly sessions and the meetings of Assembly committees and other bodies, and calls on them to revise any provisions which hinder the effective participation of members in the activities of the Assembly, in particular of substitutes when they are assigned specific functions in the Assembly and its committees.

15. In this connection, the Assembly points out that, under both the Statute of the Council of Europe (Article 25) and its own Rules of Procedure (Rule 11), following parliamentary elections, the members of the Assembly remain full members until the parliament concerned makes new appointments. Consequently, parliaments are obliged to authorise their participation in the activities of the Assembly until they have seen to their effective replacement. The Assembly calls on the national parliaments concerned to change the rules prohibiting the participation of delegation members when parliament has been dissolved or, following elections and pending the appointment of a new delegation, the participation of those members who have not sought re-election or not been re-elected.

16. Finally, the Assembly calls on the Congress of Local and Regional Authorities of the Council of Europe to review the status of local and regional elected representatives in Europe, in particular the question of the revocation of their mandate.