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COUNCIL OF EUROPE
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Introduction of sanctions against parliamentarians

Reply to Recommendation[1]: Recommendation 2083 (2016)
Committee of Ministers

1. The Committee of Ministers has carefully studied Parliamentary Assembly Recommendation 2083 (2016) – "Introduction of sanctions against parliamentarians" and has communicated it to the member States' governments as well as to the Committee of Legal Advisers on Public International Law (CAHDI), for information and comments and to the Venice Commission for information.

2. The Committee of Ministers notes that the legal situation of members of the Assembly travelling in an official capacity to and in Council of Europe member States is governed by Article 40 of the Statute of the Council of Europe, as further elaborated in the General Agreement on Privileges and Immunities of the Council of Europe (GAPI) and its Protocol. The rights of Assembly members when seeking to attend an official meeting in a member State, in particular in relation to the freedom of movement, are defined in Article 13 of the GAPI. The immunities enjoyed by them are defined in particular in Articles 14 and 15 of the GAPI. Moreover, Article 3 of its Protocol extends the immunities defined in Article 15 of the GAPI to Assembly representatives and their substitutes attending or travelling to or from meetings of the Assembly's committees or sub-committees.

3. The Committee of Ministers recalls that it has on several occasions invited the governments of member States to adopt specific measures in order to fully implement the above-mentioned privileges and immunities. For instance, in its reply to Parliamentary Assembly Recommendation 1373 (1998) on "Freedom of movement and the issue of visas to members of the Parliamentary Assembly of the Council of Europe", it invited the governments of member States to consider taking a series of measures, in conformity with their national legislation, to ensure that members of the Parliamentary Assembly on official journeys benefit from full entry facilities on the territory of member States. The Committee reiterates its invitation to member States to honour their commitments.

4. Furthermore, the Committee of Ministers observes that in its supplementary reply to Parliamentary Assembly Recommendation 1602 (2003) on "Immunities of members of the Parliamentary Assembly", it informed the Parliamentary Assembly that it had instructed the Secretary General to invite member States, where national legislation permits, to acknowledge unilaterally as an official document the laissez-passer issued by the competent Council of Europe authorities to the members of the Parliamentary Assembly. In this respect, the Committee of Ministers notes that in 2016, the Council of Europe Protocol will be issuing a Council of Europe laissez-passer to members of Council of Europe institutions (Parliamentary Assembly and Congress of Local and Regional Authorities); to judges of the European Court of Human Rights and the Administrative Tribunal; to members of monitoring bodies, including the European Committee for the Prevention of Torture (CPT) and the European Committee of Social Rights (ECSR); and to staff members of the Council of Europe. The Committee notes that this document will replace the so-called "blue passport" issued by Council of Europe Protocol since the 1970s which will be discontinued.

5. The Committee of Ministers further invites member States to consider granting immunities and privileges as suggested by the Parliamentary Assembly in paragraphs 4.2.1 and 4.2.2 of its recommendation.

1. Adopted at the 1262nd meeting of the Ministers' Deputies (6 July 2016).

6. Concerning the reference made in paragraph 4.3 of the recommendation to the "current work by the United Nations International Law Commission" (ILC), the Committee of Ministers notes that the ILC is currently examining the subject of "Immunity of State officials from foreign criminal jurisdiction" and that it has excluded "persons connected with (…) international organizations" from the scope of the "draft articles" (see draft Article 1.2). Furthermore, the ILC is only dealing with immunity from foreign criminal jurisdiction.

7. On the subject of further standard-setting work at the Council of Europe, the Committee of Ministers notes that many political and legal issues are raised by the privileges and immunities of parliamentarians and their corresponding rights and obligations, which are governed by the applicable Council of Europe treaties. It is of the opinion that an efficient implementation of these rules would solve most of the issues highlighted by the Parliamentary Assembly. Consequently, at present, the Committee of Ministers will not launch any further standard-setting work in this field, but insists on the already existing obligations of member States.