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Ensuring Parliamentary Assembly members can travel freely to carry out their work

Report¹

Committee on Rules, Ethics and Immunities

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1. Reference to committee: [Doc.15809](#), Reference 4767 of 9 October 2023.



A. Draft resolution²

1. The participation of members of the Parliamentary Assembly in its work is both a right and a responsibility. The Assembly cannot function effectively without the engagement and participation of its members. It is the responsibility and international obligation of the member States and in particular their national parliaments to facilitate the participation of members of the Assembly in its activities.
2. The Statute of the Council of Europe (ETS No.1) and the General Agreement on Privileges and Immunities of the Council of Europe (ETS No.2) create clear legally binding international obligations prohibiting any administrative or other restrictions on the free movement of members travelling on Assembly business. Barriers, however, still exist, hence the need to strengthen the national authorities' understanding of the legal requirements and the appropriate procedures to follow.
3. National parliaments should facilitate travel and attendance by members of the Assembly in the exercise of their functions. National parliaments must endeavour to eliminate mechanisms or practices by which the right of Assembly members to participate in its meetings is hampered by discretion or interference by parliamentary or political authorities. Such political or administrative controls or delayed authorisations are not appropriate in a healthy, functioning pluralist democracy. There should be no discretion in issuing authorisations for members with a right to attend a meeting and any authorisation should be done well in advance, with best practice being to approve all attendance at all foreseeable meetings of the Assembly for the whole session. Budgetary considerations are not a justification for refusing travel to members with a role to play in Assembly meetings.
4. At a minimum, attendance should be guaranteed and funded by the national parliament for:
 - 4.1. travel to Assembly sessions for all members of the national delegation (representatives and substitutes);
 - 4.2. travel to committee meetings for:
 - 4.2.1. full members of a committee;
 - 4.2.2. alternate members of a committee when replacing a full member; or when the alternate is a rapporteur and has a report on the agenda of a committee meeting, or is a candidate for appointment as a rapporteur;
 - 4.3. travel to meetings of the Standing Committee, Bureau or Presidential Committee where a member's presence is required due to their obligations to their political group, national delegation, committee, or in respect of a report; and
 - 4.4. travel to election observation and other ad hoc committees.
5. In case of conflicting obligations, it should be for the member of the Assembly concerned to determine how to balance their competing obligations as a member of the Assembly, a member of their national parliament, and any other relevant consideration affecting them.
6. With respect to the composition of national delegations, the decision to remove a member's name from the national delegation, despite that member being proposed by their national political party or group in accordance with the principle of fair representation of political parties or groups, is significant; it prevents that member from participating in the work of the Assembly and undermines the spirit of fair representation. In principle, it should be for national political groups within national parliaments to select their members on the national delegation, without interference.
7. The Assembly notes that some impediments to the free movement of its members necessitate clarifying the application and operation of the provisions related to the regime of parliamentary immunities in the Assembly so that these are easier to follow for national authorities. The Assembly therefore amends Rule 73 of its Rules of Procedure and the Guidelines on the scope of parliamentary immunities enjoyed by members of the Parliamentary Assembly (Appendix III to the Rules of Procedure) as set out in the paragraphs 13 and 14 to 19 of this resolution, in particular with the aim of providing further clarity as to:
 - 7.1. the sorts of travel that fall within the exercise of a member's functions for the purposes of parliamentary immunity;

2. Draft resolution unanimously adopted by the committee on 5 September 2025.

7.2. how to approach travel restrictions imposed as a result of criminal proceedings and which negatively affect a member's ability to fulfil their functions (for example, a travel ban, house arrest, curfew or detention);

7.3. the interrelationship of some of these immunities;

7.4. the practical steps that need to be taken by parliamentary, judicial, investigatory and prosecutorial authorities when dealing with a case in which immunities of a member of the Assembly are engaged.

8. The Assembly regrets that there remain instances of failures by national authorities to respect the immunities of its members, which consequently impedes the ability of those members to fulfil their functions. The Assembly resolves to clearly assert and defend these immunities in cases where they are not respected. The Assembly wishes to support the President of the Assembly in his prerogatives, and encourages the President to inform the Assembly of such cases so that appropriate measures can be taken.

9. The Assembly recalls that parliamentary inviolability for words spoken and votes cast in national parliaments, and in interparliamentary assemblies, is a core democratic principle common to democratic States and is reflected in Article 14 of the General Agreement on Privileges and Immunities and Article 40 of the Statute of the Council of Europe.

10. The Assembly deplores Azerbaijan's reported "blacklist" of at least 77 members of the Assembly from at least 28 member States of the Council of Europe, including the President of the Assembly, whose names have been added to that list due to votes cast or opinions expressed in the Assembly and who have since been subject to "sanctions" such as a travel ban from entering Azerbaijan. The Assembly calls on the Azerbaijani authorities to approach to Azerbaijan's obligations as a member of the Council of Europe in good faith and to immediately remove any "sanctions" imposed in consequence of protected activities such as voting or expressing opinions within the Assembly.

11. The Assembly expresses concern at the politically motivated criminal proceedings against some of its members by the Russian Federation and notes concerns that the Russian Federation may seek to abuse international co-operation mechanisms such as Interpol to persecute foreign parliamentarians and members of the Assembly. The Assembly underlines that its members benefit from parliamentary immunities, including immunity from arrest, detention or prosecution. No arrest warrant, from Interpol or otherwise, should be issued or given effect, in respect of those highly politically-motivated criminal proceedings given their political nature and the immunities from which members of the Assembly benefit. The Assembly invites Interpol to take note of its position.

12. The Assembly invites all Council of Europe member States to:

12.1. inform the Assembly of their domestic parliamentary immunity provisions;

12.2. provide clear guidance and appropriate training on the requirements of the General Agreement on Privileges and Immunities to national investigatory, prosecutorial and judicial authorities, building on the revised "Guidelines on the scope of parliamentary immunities enjoyed by members of the Parliamentary Assembly", so that these authorities are aware of the Guidelines and of the actions to take if dealing with a case that concerns immunities of members of the Assembly;

12.3. review their visa requirements for members of the Assembly travelling on Assembly business, to ensure that the length and complexity of the form; the cost; and the time taken in delivering the visa, are reduced to the minimum necessary, in accordance with the prohibition in Article 13 of the General Agreement on Privileges and Immunities on "administrative or other restrictions" impeding the free movement of members of the Assembly;

12.4. ensure that their border guards and customs officers are properly informed about the Council of Europe, the General Agreement on Privileges and Immunities and the Council of Europe laissez-passer. The Assembly notes that the agenda for a committee meeting contains the convocation for members of that committee. This should suffice for proving that the provisions of the General Agreement on Privileges and Immunities apply to members travelling to attend that meeting.

Extract of the Assembly Rules of Procedure

13. Rule 73 – Waiver of the immunity of representatives and substitutes

13.1. (73.1) 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.

13.2. (73.2.) Any request addressed to the President by a competent authority of a member State for the waiver of immunity of a representative or substitute shall be announced in a plenary sitting or Standing Committee meeting and then referred to the Committee on Rules, Ethics and Immunities (“the Rules Committee”).

13.3. (73.3.) The Rules 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 Rules 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 provide the member concerned by the request, or another member of the Assembly representing the member, with an opportunity to be heard. The member concerned may submit any document which he or she deems relevant. The Rules Committee 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 Rules Committee shall conclude with a draft resolution for the retention or the waiver of immunity. No amendment to that decision will be admissible

13.4. (73.4.) The report 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.

13.5. (73.5.) The President shall immediately communicate the decision of the Assembly to the authority which submitted the request.

13.6. (73.6.) In the event of a member of the Assembly being arrested or deprived of freedom of movement in supposed violation of their 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. The President of the Assembly may ask the competent national authorities to provide any information and details considered necessary. A member or former member may address a request to the President of the Assembly 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.

13.7. (73.7.) When dealing with requests for the waiver of the Council of Europe immunity, or with requests to defend the immunity of an Assembly member, the competent Assembly organs shall interpret the General Agreement on Privileges and Immunities of the Council of Europe as follows:

13.7.1. (73.7.a.) Assembly members (representatives and substitutes) are immune from prosecution, arrest and deprivation of their free movement 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.

13.7.2. (73.7.b.) The terms “deprivation of their free movement” include measures that contain administrative, legal, judicial or other restrictions on an Assembly member’s free movement and includes detention, house arrest, curfew, surrender of passport and travel ban (whether an absolute travel prohibition or a travel ban requiring judicial authorisation for travel). It does not include a measure that explicitly allows travel in the exercise of their functions as a member of the Assembly.

13.7.3. (73.7.c.) The terms “in the exercise of their functions” include all official duties discharged by Assembly members in the member States on the basis of a decision by a competent Assembly body and, if necessary, with the consent of the appropriate national authorities. It includes (but is not limited to) travel to attend:

- Assembly sessions (for all members of the Assembly).

- meetings of the Standing Committee (for all members of the Assembly)
- meetings of the Presidential Committee (for members of the Presidential Committee or those covering for them)
- meetings of the Bureau of the Assembly (for members of the Bureau or those covering for them)
- meetings of general committees, ad hoc committees, including ad hoc committees on the observation of elections, sub-committees and ad hoc sub-committees (for both full members and, where applicable, alternate members of those committees or sub-committees)
- meetings of networks, platforms and alliances of the Assembly
- travel on a mission as a rapporteur of the Assembly
- travel on a representative mission on behalf of the Assembly or a committee.

13.7.4. (73.7.d.) In case of doubt, the Bureau of the Assembly shall decide if Assembly members' activities took place in the exercise of their functions.

13.8. (73.8.) In cases where there are concerns that the immunities and privileges protected under the General Agreement in Privileges and Immunities have not been fully respected, the President may make a statement during the next part-session. This statement should note any recent interference with such privileges and immunities, and, if necessary, may remind the competent authorities of their obligations set out under the General Agreement on Privileges and Immunities.

13.9. (73.9.) The guidelines on the scope of parliamentary immunities enjoyed by members of the Parliamentary Assembly shall be appended to these Rules of Procedure as a complementary text.

Guidelines on the scope of the parliamentary immunities enjoyed by members of the Parliamentary Assembly (Appendix of the Resolution 2392 (2021) adopted by the Assembly on 27 September 2021 (as amended))

14. **(A.) Purpose and general principles**

14.1. The following principles pursue the objective of clarifying the application of the existing rules under the Statute of the Council of Europe and under the General Agreement on Privileges and Immunities of the Council of Europe (hereafter "GAPI") and the Additional Protocol thereto.

14.2. Members of the Parliamentary Assembly enjoy privileges and immunities which serve to preserve the integrity of the Assembly and ensure the independence of its members in the discharge of their office. These privileges and immunities are granted by Article 40 of the Statute of the Council of Europe and by Articles 13 to 15 of the GAPI and Article 3 of the Additional Protocol thereto.

14.3. Their practical implementation is further detailed in the Rules of Procedure and relevant Assembly resolutions bearing in mind:

- the need to protect the independence of the Assembly;
- the functional purpose underlying the concept of immunities;
- existing precedents.

14.4. Parliamentary immunity is not a member's personal privilege but an institutional privilege which members enjoy in their individual capacity.

15. **(B.) The immunities of members of the Parliamentary Assembly that are protected and guaranteed under the General Agreement on Privileges and Immunities of the Council of Europe**

15.1. The following immunities of Assembly members are protected and guaranteed under the GAPI, the Statute of the Council of Europe and the Rules of Procedure of the Assembly:

15.1.1. Absolute immunity in respect of words spoken and votes cast in the meetings of the Assembly (Article 14 GAPI and Article 40 of the Statute).

15.1.2. Free movement of members of the Assembly to and from meetings of the Assembly – with a clear prohibition on the imposition of administrative or other restrictions on such movement (Article 13 GAPI, Rule 73 of the Rules of Procedure). This includes and is linked to:

15.1.2.1. immunity from detention – unless the Assembly has waived such immunity (Articles 13 and 15 GAPI, Article 3 of the Protocol to GAPI, Article 40 of the Statute and Rule 73 of the Rules of Procedure);

15.1.2.2. immunity from other restrictions affecting travel on Assembly business, such as the imposition of a travel ban, house arrest or curfew, unless (1) that measure expressly allows all travel to Assembly meetings; or (2) the Assembly has waived such immunity (Articles 13 and 15 GAPI as read together, Article 40 of the Statute, as well as Rule 73 of the Rules of Procedure);

15.1.2.3. immunity from arrest, except in case of in *flagrante delicto* (Article 15 GAPI).

15.1.3. Immunity from prosecution, specifically:

15.1.3.1. immunity from prosecution on the territory of other member States (Article 15.b GAPI, Article 3 of the Protocol to GAPI, Article 40 of the Statute and Rule 73 of the Rules of Procedure);

15.1.3.2. on the national territory, immunity from prosecution on the same terms as national protections in respect of parliamentary immunity from prosecution (Article 15.a GAPI, Article 3 of the Protocol to GAPI, Article 40 of the Statute and Rule 73 of the Rules of Procedure); the application of this immunity requires an understanding of the extent of the national law providing for parliamentary immunity.

16. (C.) Absolute immunity in respect of words spoken and votes cast (Article 14 of the General Agreement on Privileges and Immunities of the Council of Europe)

16.1. Freedom of expression is the most valuable tool enabling members to exercise their duties and it enjoys enhanced protection. Therefore, the immunity guaranteed by Article 14 GAPI:

16.1.1. is absolute, permanent and perpetual in nature; it continues to apply after the end of a member's mandate; it cannot be waived by the Parliamentary Assembly or a national parliament;

16.1.2. is an institutional privilege; a member or a former member has no liberty to waive or to renounce it;

16.1.3. applies to all legal proceedings (criminal, civil or administrative) which may arise in relation to words spoken and votes cast. As a corollary, no parliamentarian covered by such an immunity should be heard, including as a testifying witness, with regard to information obtained confidentially in the performance of their parliamentary duties which they do not see fit to disclose;

16.1.4. has an autonomous scope, which could be different from the scope of the absolute immunity that protects national parliamentarians, to be established bearing in mind relevant statutory provisions, the case law of the European jurisdictions and relevant Assembly practices;

16.1.5. given the exceptional protection, covers merely what is strictly necessary to allow the Assembly members to perform their duties, engage in respectful debate or express critical positions while precluding the misuse of the privileges and immunities for personal benefit. With this in mind, immunity does not cover activities prohibited by the Code of Conduct for members of the Parliamentary Assembly, such as paid advocacy;

16.1.6. covers words spoken and votes cast by the members of the Assembly “in the exercise of their functions”, bearing in mind the present-day definition of core functions of the Assembly members;

16.1.7. could, in addition to covering statements made by members during a debate in the plenary or during meetings of the committees and sub-committees, be also extended to verbal and written statements made by members outside official premises as well as to other activities performed by them in their capacity as Assembly members if there is an obvious and direct connection between these statements or activities and the exercise of their functions as Assembly members;

16.1.8. does not cover an inquiry into bribery-related offences (for example, offering or requesting undue advantages in return for certain voting behaviour), given that those offences do not pertain to words spoken or votes cast.

16.2. It is the responsibility of competent national courts to recognise that a member or a former member enjoys absolute immunity owing to the direct and obvious link to his or her parliamentary functions. By doing so, the relevant Council of Europe bodies and national courts must co-operate so as to avoid any conflict in the interpretation and application of the provisions of the Statute and the General Agreement on Privileges and Immunities

16.3. Where a request for waiver of immunity is submitted to it by a national authority, the Assembly must first of all ascertain whether the facts giving rise to the request for the waiver are covered by Article 14 GAPI, in which case immunity cannot be waived.

16.4. It is inherent in Article 40.a of the Statute, and Article 14 as read with Article 13 GAPI, that the imposition of sanctions, entry or exit restrictions or so-called “blacklisting” of members of the Assembly in consequence of words spoken or votes cast in debates of the Assembly is a violation of GAPI, of democratic principles and of a State’s obligations as member of the Council of Europe.

17. (D.) Immunity from prosecution (Article 15 of the General Agreement on Privileges and Immunities of the Council of Europe)

17.1. The purpose of this immunity is to protect a parliamentarian from undue pressure which could be exercised against him or her in respect of acts which do not constitute a part of typical parliamentary activities and applies as follows:

17.1.1. members of the Assembly enjoy the immunity provided for in Article 15 during the Assembly sessions. The term “during the sessions” covers the whole parliamentary year in view of the continuous activity of the Assembly and its bodies;

17.1.2. members of the Assembly enjoy the immunities secured by this provision when they are no longer members of their national parliament, and do so until their replacement as members of the Assembly or until the opening of the next session;

17.1.3. according to the Statute, protection afforded to members of the Assembly applies during their Assembly mandate. It could also cover proceedings initiated prior to becoming a member of the Assembly as long as those proceedings contain evidence of *fumus persecutionis*. This position, which intends to make protection fully effective, is in line with practices existing in several member States and does not contradict the Statute in that it links the acquisition of immunity to the beginning of the term of office. Nor does it contradict the principle of the functionality of parliamentary immunity in that the protection will only be granted if factual elements indicate that the intention underlying the legal proceeding predating the mandate of an Assembly member is to damage a member’s political activity and thus the Assembly. In all other cases if the prosecution is for no other reason than the proper administration of justice, immunity must be lifted at the request of the national authority;

17.1.4. immunity cannot be invoked in cases of in *flagrante delicto*. As the objective of this provision is to quickly restore public order and reduce the risk of evidence disappearing, its use by national authorities shall not be inspired by concerns unrelated to the proper administration of justice;

17.1.5. at all stages when parliamentary immunity is waived the presumption of innocence must be respected;

17.1.6. when considering a request to waive immunity, the Assembly must consider the following elements: legal proceedings initiated against the member should not jeopardise the proper functioning of the Assembly; the request must be serious, that is, not inspired by reasons other than that of dispensing justice. If neither of these elements can be established, the Assembly should normally propose waiving immunity;

17.1.7. immunity cannot be waived except by the Assembly at the request of a “competent authority” of the member State concerned. The competent authority is normally the judge in charge of the case, but it could also be the public prosecutor or the Minister of Justice. The request to waive immunity may be submitted by an authority of a member State other than the one of which the member in question is a national;

17.1.8. where members are required to appear as witnesses or expert witnesses, there is no need to request a waiver of immunity provided that they will not be obliged to appear on a date or at a time which prevents them from performing their parliamentary duties or which makes it difficult for them to perform those duties, or if they are able to provide a statement in writing or in any other form which does not make it difficult for them to perform their parliamentary duties.

18. (E.) Immunity from measures preventing travel on Assembly business, such as detention, a travel ban, house arrest or curfew, unless the measure expressly allows all travel on Assembly business (Articles 13 and 15 of the General Agreement on Privileges and Immunities of the Council of Europe as read together, Article 3 of the Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, Article 40 of the Statute of the Council of Europe, and Rule 73 of the Assembly's Rules of Procedure)

18.1. Article 13 GAPI prohibits all administrative or other restrictions from being imposed on a member's free movement to and from meetings of the Assembly. The purpose of this immunity is to allow the free movement of members of the Assembly travelling on Assembly business – that is to say, to ensure that members of the Assembly are able to travel in the exercise of their official functions and are not unduly prevented from performing those functions without an appropriate waiver of that immunity.

18.2. The term “in the exercise of their functions” includes all official duties discharged by Assembly members in the member States on the basis of a decision by a competent Assembly body and, if necessary, with the consent of the appropriate national authorities. It includes (but is not limited to) travel to attend:

- Assembly sessions (for all members of the Assembly);
- meetings of the Standing Committee (for all members of the Assembly);
- meetings of the Presidential Committee (for members of the Presidential Committee or those covering for them);
- meetings of the Bureau of the Assembly (for members of the Bureau or those covering for them);
- meetings of general committees, ad hoc committees, including ad hoc committees on the observation of elections, sub-committees and ad hoc sub-committees (for both full members and, where applicable, alternate members of those committees or sub-committees);
- meetings of networks, platforms and alliances of the Assembly;
- travel on a mission as a rapporteur of the Assembly;
- travel on a representative mission on behalf of the Assembly or a committee.

18.3. This includes immunity from the imposition of measures restricting travel (such as detention, house arrest, curfew, travel ban or the surrender of a passport) unless (i) that measure expressly allows all travel on Assembly business; or (ii) the Assembly has waived such immunity

18.4. In the case of a judicial, prosecutorial or investigatory service wishing to impose measures restricting a member's travel (such as detention, house arrest, a curfew, a travel ban or bail conditions restricting travel) that would not expressly allow all travel on Assembly business, then they would first need to make an application to waive immunity before imposing such a measure

18.5. This immunity applies as follows:

18.5.1. members of the Assembly enjoy the immunity provided for in Articles 13 and 15 during the Assembly sessions. The term “during the sessions” covers the whole parliamentary year in view of the continuous activity of the Assembly and its bodies;

18.5.2. members of the Assembly enjoy the immunities secured by this provision when they are no longer members of their national parliament, and do so until their replacement as members of the Assembly or until the opening of the next session;

18.5.3. according to the Statute, protection afforded to members of the Assembly applies during their Assembly mandate. It could also cover proceedings initiated or related to events that occurred prior to becoming a member of the Assembly, given that a member of the Assembly needs to be at liberty to travel in order to fulfil their mandate, and therefore such protection is

necessary if this immunity and their role are to be fully effective. However, in cases where a measure is necessary for the proper administration of justice and no lesser options are feasible in the circumstances, immunity must be lifted at the request of the national authority;

18.5.4. immunity cannot be invoked in cases of a short duration arrest in *flagrante delicto*. As the objective of this provision is to quickly restore public order and reduce the risk of evidence disappearing, its use by national authorities shall not be inspired by concerns unrelated to the proper administration of justice and must only be of a very short duration;

18.5.5. at all stages when parliamentary immunity is waived the presumption of innocence must be respected;

18.5.6. when considering a request to waive immunity, the Assembly must consider the following elements: legal proceedings initiated against the member should not jeopardise the proper functioning of the Assembly; the request must be serious, that is, not inspired by reasons other than that of dispensing justice. If neither of these elements can be established, the Assembly should normally propose waiving immunity;

18.5.7. immunity cannot be waived except by the Assembly at the request of a “competent authority” of the member State concerned. The competent authority is normally the judge in charge of the case, but it could also be the public prosecutor or the Minister of Justice. The request to waive immunity may be submitted by an authority of a member State other than the one of which the member in question is a national;

18.5.8. restriction of the liberty and free movement of an Assembly member requires very serious grounds as it prevents him or her from exercising his or her functions. Where there are no indications that the suspect is likely to evade justice, the proper conduct of the investigation shall be ensured, if possible, by other security measures (release on bail, for example).

19. (F.) Practical Guide for judicial, prosecutorial or investigatory authorities in bringing a prosecution against a member of the Parliamentary Assembly

19.1. This part of the guidelines is intended as a practical guide for investigators, prosecutors and judges when dealing with criminal cases concerning members of the Assembly.

19.2. A waiver of immunity is required prior to:

19.2.1. imposing measures which restrict the travel of a member of the Assembly – this includes arrest, detention, house arrest, curfew, travel ban or bail conditions restricting travel (such as the retention of a passport). If the measures expressly does not apply to travel on Parliamentary Assembly business, then a waiver of immunity is not required;

19.2.2. in the member's national country, initiating the prosecution of a member of the Assembly if such a waiver of immunity is required under national law;

19.2.3. in all other member States, initiating a prosecution of a member of the Assembly.

19.3. The procedure for seeking the waiver of immunity is as follows (subject to any national procedural requirements that may apply):

19.3.1. the “competent authority” (usually the judge in charge of case, the public prosecutor or the Minister of Justice) must submit a request addressed to the President of the Assembly, in writing, seeking a waiver of immunity;

19.3.2. the request for the waiver of immunity must specify the reasons for the request, specifically what the waiver of immunity relates to including:

19.3.2.1. whether the request is to waive immunity for the purposes of (1) restriction of free movement (for example a travel ban, detention, house arrest, curfew or other travel restriction); and/or (2) initiation of prosecution;

19.3.2.2. the charges or offences to which the request relates;

19.3.2.3. whether any lesser measures have been considered that would still enable the member's full participation in the activities of the Assembly (and if so, what measures and any reasoning as to why they have or have not been pursued).

19.3.3. the Assembly, specifically the Committee on Rules, Ethics and Immunities, will consider the request immediately in accordance with the procedure set out in Rule 73 of the Rules of Procedure and the Guidelines on Parliamentary Immunities.

19.4. Where an investigative, prosecutorial or judicial authority has imposed any of the measures listed in paragraph 18 above on a member of the Assembly without a waiver of immunity, the following actions should be taken:

19.4.1. The parliamentary authorities (normally the Speaker of the national parliament) should write to the relevant judicial, prosecutorial and/or investigatory authorities underlining the existence of the immunities under GAPI and the legal impossibility of imposing the relevant measure (travel restriction, detention or – if applicable – initiation of prosecution) without the waiver of immunity by the Assembly. This letter should explain the procedure for requesting the waiver of immunity and the importance of not imposing (or annulling the imposition of) any such measures unless and until such immunity has been waived.

19.4.2. If necessary, the President of the Assembly should write to the Speaker of the national parliament recalling the immunities under GAPI, asserting the defence of the immunity of the relevant member of the Assembly, and asking the Speaker to take the relevant steps to ensure that the national authorities (including the executive and judicial authorities) are fully aware of these obligations and of the steps to be taken to seek a waiver of immunity before the imposition of any measures restricting travel (for example detention, travel ban, house arrest) or – if applicable – instigation of prosecution

B. Explanatory memorandum by Mr Sergiy Vlasenko, rapporteur³

1. Introduction

1. The Parliamentary Assembly cannot function if its members (both representatives and substitutes) are prevented from travelling to attend meetings as part of their European mandate. The legal instruments establishing the Council of Europe therefore confer on members of the Assembly a special regime of privileges and immunities in order to enable Assembly members to contribute to the Assembly's mission without hindrance.

2. This report is based on a motion for a resolution which made clear that “the participation of members of the Assembly in its work is both a right and a responsibility” and that it is “the responsibility of national parliaments to facilitate the participation of members of the Assembly in its activities”.⁴ The motion for a resolution arose due to the Committee on Rules, Ethics and Immunities (hereafter “the Rules Committee”) being informed of various situations in which restrictions or bans, administrative or otherwise, were imposed on the freedom of movement of members of the Assembly preventing them from fulfilling their functions and travelling as members of the Assembly, seemingly contrary to the requirements of Article 13 of the General Agreement on Privileges and Immunities of the Council of Europe, 1949 (ETS No. 2) (hereafter “GAPI”).

3. In the context of the work on this report, I sent a questionnaire to national delegations (to which 18 delegations replied),⁵ held numerous bilateral meetings with members of the Assembly affected by limitations on their free movement, and carried out a fact-finding visit to Armenia on 19-20 May 2025. I am grateful to all who have engaged with me on these issues and in particular to the Armenian authorities for organising and facilitating such a constructive visit. My overall conclusion is that there are specific impediments to the free movement of members of the Assembly that occur in particular circumstances or countries. There are ways to avoid such violations of Article 13 GAPI, as set out below and I propose amendments to the Rules of Procedure of the Assembly and to the Guidelines on the scope of the parliamentary immunities enjoyed by members of the Parliamentary Assembly set out in Appendix III to the Rules of Procedure (hereafter “the Guidelines on parliamentary immunities”). I also propose to disseminate best practice for national authorities to facilitate their understanding of the applicable law and requirements.

4. In this report, I will first set out the legal framework of immunities that applies to members of the Assembly (chapter 2), before recalling the situations in which members of the Assembly have faced restrictions or bans on their freedom of movement preventing them from fulfilling their functions and travelling as members of the Assembly (chapter 3), I will then consider conclusions and proposals including administrative barriers imposed by the national parliamentary authorities, provisions concerning entry and exit requirements, travel restrictions imposed as a result of criminal investigations and proceedings and measures to enhance the consequences for a failure by a member State to respect its obligations under GAPI (chapter 4).

2. The legal framework of immunities that applies to members of the Parliamentary Assembly

2.1. Relevant provisions of the international treaties

5. Article 40(a) of the Statute of the Council of Europe, 1949 (ETS No. 1) provides:

“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. These immunities shall include immunity for all representatives to the Consultative [Parliamentary] Assembly from arrest and all legal proceedings in the territories of all members, in respect of words spoken and votes cast in the debates of the Assembly or its committees or commissions.”

3. The explanatory memorandum is drawn up under the responsibility of the rapporteur.

4. The [motion for resolution](#) (AS/Pro(2023)07) was originally entitled “Free movement of representatives to the Parliamentary Assembly and their substitutes to and from the place of meeting” and was tabled by the Committee on Rules of Procedure, Immunities and Institutional Affairs (the former name of the Committee on Rules, Ethics and Immunities). The title of the report was amended by the Committee on 25 June 2025 to “Ensuring Assembly members can travel freely to carry out their work”.

5. See Information Note AS/Rul(2025)11, that I will ask to be declassified.

6. Article 40(b) of the Statute required the member States, as soon as possible, to enter into agreement for the purpose of fulfilling the provisions of Article 40(a). This led to the elaboration of the GAPI. Article 13 GAPI provides in its first sentence:

“No administrative or other restriction shall be imposed on the free movement to and from the place of meeting of Representatives to the Consultative [Parliamentary] Assembly and their substitutes”.

7. Article 14 GAPI provides:

“Representatives to the Consultative [Parliamentary] Assembly and their substitutes shall be immune from all official interrogation and from arrest and all legal proceedings in respect of words spoken or votes cast by them in the exercise of their functions.”

8. Article 15 GAPI provides:

“During the sessions of the Consultative [Parliamentary] Assembly, the representatives to the Assembly and their substitutes, whether they be members of Parliament or not, shall enjoy:

- a. on their national territory, the immunities accorded in those countries to members of Parliament,*
- b. on the territory of all other member States, exemption from arrest and prosecution.*

This immunity also applies when they are travelling to and from the place of meeting of the Consultative [Parliamentary] Assembly. It does not, however apply when Representatives and their substitutes are found committing, attempting to commit, or just having committed an offence, nor in cases where the Assembly has waived the immunity.”

9. The first Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, 1952 (ETS No. 10) further clarifies in its Article 3:

“The provisions of Article 15 of [GAPI] shall apply to Representatives to the Assembly, and their Substitutes, at any time when they are attending or travelling to and from, meetings of committees and sub-committees of the Consultative [Parliamentary] Assembly, whether or not the Assembly is itself in session at such time”.

10. Article 5 of that Protocol to GAPI provides:

“Privileges, immunities and facilities are accorded to the representatives of members not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions in connection with the Council of Europe. Consequently, a member has not only the right but the duty to waive the immunity of its representative in any case where, in the opinion of the member, the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded.”⁶

11. It should be noted that the immunities of the European Parliament are based on the same textual provisions and therefore the two institutions have had regard to each other's interpretation of these provisions over the decades.

2.2. The Parliamentary Assembly procedural texts

12. Over the years the Assembly has adopted resolutions and Rules of Procedure relevant to the exercise of the privileges and immunities of its members. Rule 73 of the Rules of Procedure of the Assembly (waiver of the immunity of representatives and substitutes):

- recalls the privileges and immunities as set out above and their purpose to “safeguard the independence of [the members of the Assembly] in exercising their European office” (Rule 73.1);
- makes provision for any request to waive immunity to be addressed to the President of the Assembly, by a competent authority, to then be announced in plenary or Standing Committee and referred to the Rules Committee (Rule 73.2);

6. The institutional purpose of immunities and the importance of preventing the possible misuse of privileges by parliamentarians for personal purposes has been repeated in successive Assembly resolutions as clearly applying also to decisions around the applicability and possible waiver of immunities of Assembly members (see, for example, [Resolution 2392 \(2021\)](#) “Guidelines on the scope of the parliamentary immunities enjoyed by members of the Parliamentary Assembly”, para. 4).

- sets out the process in the Rules Committee, including that it may issue an opinion on the competence of the requesting authority; that it may not examine the merits of the case; that it may not pronounce on the guilt or otherwise of the member or whether the acts in question justify prosecution; that it shall hear from the member concerned or a member representing that member; that the Rules Committee may ask the competent national authority to provide it with any information or details necessary to determine whether or not immunity should be waived; that the report of the committee must conclude with a draft resolution for the retention or waiver of immunity; and that no amendment to that decision will be admissible (Rule 73.3);
 - provides that the report on the request to waive immunity must be the first item of business of the Assembly on the first sitting day after the report has been tabled; that the debate on the report must be confined to arguments for or against the waiver of immunity; and that where a request to waive immunity relates to more than one accusation, these may be the subject of a separate decision (Rule 73.4);
 - requires the President of the Assembly to immediately communicate the decision of the Assembly to the authority that submitted the request (Rule 73.5);
 - provides that if a member of the Assembly is arrested or deprived of freedom of movement in supposed violation of their privileges and immunities, the President of the Assembly may confirm those privileges and immunities. It further provides that a member or former member may address a request to the President of the Assembly to defend his or her immunity and privileges. It also specifies that the Bureau may, at the request of the President and subject to ratification by the Assembly, refer a case to the relevant committee (Rule 73.6);
 - makes provision as to the interpretation of Article 15.a GAPI, such that members of the Assembly are immune from prosecution and arrest in the exercise of their functions as Assembly members of when travelling on Assembly business, whether inside or outside of their national territory (where they are not active or travelling on Assembly business, then the national regime applies). It further provides that in case of doubt as to whether members are acting in the exercise of their functions, the Bureau of the Assembly shall so decide (Rule 73.7.a, 73.7.b and 73.3.c);
 - clarifies that the Guidelines on parliamentary immunities provide further clarity (Rule 73.7.d).
13. The “Guidelines on parliamentary immunities” focus on Articles 14 and 15 GAPI. They do not, at present, cover Article 13 GAPI.

2.3. Relevant resolutions of the Parliamentary Assembly

14. Relevant resolutions of the Assembly include:
- [Resolution 2392 \(2021\)](#) “Guidelines on the scope of the parliamentary immunities enjoyed by members of the Parliamentary Assembly”, which analysed the immunity regime of Assembly members, focussing in particular on Articles 14 and 15 GAPI. It established the “Guidelines on the scope of the parliamentary immunities enjoyed by members of the Parliamentary Assembly” (now found in Appendix III to the Rules of Procedure). This resolution emphasised the obligation on national competent authorities to request the lifting of immunity of a member of the Assembly before any restrictions could be imposed on a member.
 - [Resolution 2127 \(2016\)](#) and [Recommendation 2095 \(2016\)](#) “Parliamentary immunity: challenges to the scope of the privileges and immunities enjoyed by members of the Parliamentary Assembly”, which highlighted challenges when immunities regimes were perceived as being used to protect hate speech or corruption. It noted that where the rule of law was well protected, parliamentary inviolability was not necessary, but in other democracies in Europe it was still needed. It set out a series of principles for member States to consider when reviewing their national systems of parliamentary immunity.
 - [Resolution 2126 \(2016\)](#) “The nature of the mandate of members of the Parliamentary Assembly”, which focussed on restrictions (“disguised” sanctions) imposed by members’ own national parliaments, and highlighted shortcomings in national procedures that enabled members to be replaced in national delegations or have travel restrictions imposed that would prevent them from participating in the work of the Assembly.
 - [Resolution 2087 \(2016\)](#) and [Recommendation 2083 \(2016\)](#) “Introduction of sanctions against parliamentarians”, in which the Assembly focussed on the issue of restrictive measures imposed on foreign parliamentarians (often referred to as “blacklists”), usually as part of a package of sanctions targeting a State. The Assembly reiterated its call for member States to respect statutory texts on the

freedom of movement and the immunity regime and, noting the increasing importance of “parliamentary diplomacy”, recommended the imposition of legal guarantees governing the listing process and appeal procedures for those on “sanctions” lists. It further called for members of observer and partner for democracy delegations to be granted privileges and immunities equivalent to those of members (and this was subsequently endorsed by the Committee of Ministers).

- [Resolution 1490 \(2006\)](#) “Interpretation of Article 15.a of the General Agreement on Privileges and Immunities of the Council of Europe”, which clarified that the immunities of Assembly members guarantee their immunity from arrest and detention when travelling on Assembly business and in the exercise of their functions as Assembly members, regardless of their country of origin. It clarified that this immunity from arrest and detention could not be restricted unless it was previously lifted by the Assembly. This position has been subsequently confirmed by the Junqueras case (interpreting the mirror provisions applicable to the European Parliament).⁷
- [Resolution 1325 \(2003\)](#) and [Recommendation 1602 \(2003\)](#) “Immunity of Members of the Parliamentary Assembly”, which (i) focussed on the evolving nature of the duties of members, which covered official missions outside the Assembly precinct, as well as meetings of committees and the plenary Assembly, and (ii) resulted in the acknowledgement by member States of the laissez-passer to facilitate travel by members of the Assembly.

2.4. The scope and interrelation between Articles 13, 14 and 15 of the General Agreement on Privileges and Immunities of the Council of Europe

2.4.1. Legal status of Article 13 of the General Agreement on Privileges and Immunities of the Council of Europe

15. Article 13 GAPI provides “No administrative or other restriction shall be imposed on the free movement to and from the place of meeting of Representatives to the Consultative Assembly and their substitutes”. Representatives and substitutes are “members” of the Assembly and I shall hereafter use “members” to refer to both.

16. “Place of meeting” covers diverse obligations on members in the exercise of their functions, including travel to attend plenary sessions; meetings of the Standing Committee, Bureau, or Presidential Committee; meetings of general or ad hoc committees, sub-committees, or other networks, alliances or platforms; travel as part of the functions of rapporteur (including co-rapporteur, general rapporteur and youth rapporteur); or travel as part of an election observation mission or a representative role. All of these are to be considered as meetings to which the privileges and immunities protections would apply. I propose clarifying this in the Rules of Procedure to help with certainty and clarity of the extent of this provision.

17. Article 13 GAPI is an internationally binding obligation on all States of the Council of Europe not to impose any administrative or other restrictions on the free movement of Assembly members to and from Assembly meetings. Article 13 GAPI does not allow for discretion on the part of the authorities. Therefore, granting an authorisation for an Assembly member to attend an Assembly meeting is not a discretionary matter for any parliamentary, executive, judicial, prosecutorial, investigative or other authority; it is a clear, legally binding obligation.

2.4.2. Scope and interrelation between Articles 13, 14 and 15 of the General Agreement on Privileges and Immunities of the Council of Europe

18. The immunities protected under Articles 13, 14 and 15 GAPI necessarily interrelate. For example:
- restrictions on free movement caused by restrictions relating to arrest, detention, prosecution or travel restriction (including as part of bail conditions or under a travel ban), necessarily involve a consideration of both Articles 13 and 15 GAPI;
 - restrictions on free movement imposed on members as a result on their voting and speech in Assembly meetings, necessarily imply a consideration of both Articles 13 and 14 GAPI.

7. Junqueras case C-502/19, CJEU, 2019.

19. In light of the interwoven nature of some of the provisions of Articles 13, 14 and 15 GAPI as well as the instructive recent experience of dealing with immunities cases, the committee authorised me to ensure that any amendments or recommendations also cover any incidental reflections on Articles 14 and 15 GAPI to ensure coherence in the approach taken to the overall approach to immunities of members of the Assembly. This is important for example in considering:

- the approach to take to the potential imposition of travel restrictions or detention, as a result of criminal investigations or prosecutions, including to defend and potentially to waive immunity (which involves a consideration of Articles 13 and 15 GAPI);
- the purported “blacklisting” (imposition of an entry ban) by Azerbaijan of at least 77 members of the Assembly due to their voting as members of the Assembly (which involves consideration of Articles 13 and 14 GAPI).

2.4.3. Parliamentary Assembly immunities under the General Agreement on Privileges and Immunities of the Council of Europe

20. The following Assembly immunities are thus protected and guaranteed under the GAPI, the Statute of the Council of Europe and the Rules of Procedure of the Assembly:

- absolute immunity in respect of words spoken and votes cast in the meetings of the Assembly (Article 14 GAPI and Article 40 of the Statute of the Council of Europe);
- free movement of members of the Assembly to and from meetings of the Assembly – with a clear prohibition on the imposition of administrative or other restrictions on such movement (Article 13 GAPI, Rule 73 of the Rules of Procedure). This includes and is linked to:
 - immunity from detention – unless the Assembly has waived such immunity (Articles 13 and 15 GAPI, Article 3 of the Protocol to GAPI, Article 40 of the Statute and Rule 73 of the Rules of Procedure);
 - immunity from the imposition of a travel ban, unless (1) that travel ban expressly allows all travel to Assembly meetings; or (2) the Assembly has waived such immunity (Articles 13 and 15 GAPI as read together, Article 40 of the Statute, as well as Rule 73 of the Rules of Procedure);
 - immunity from arrest, except in case of in *flagrante delicto* (Article 15 GAPI);
- immunity from prosecution, specifically:
 - immunity from prosecution on the territory of all other member States (Article 15(b) GAPI, Article 3 of the Protocol to GAPI, Article 40 of the Statute and Rule 73 of the Rules of Procedure);
 - on the national territory, immunity from prosecution on the same terms as national protections in respect of parliamentary immunity from prosecution (Article 15 GAPI, Article 3 of the Protocol to GAPI, Article 40 of the Statute and Rule 73 of the Rules of Procedure); the application of this immunity requires an understanding of the extent of the national law providing for parliamentary immunity.

21. I propose that this more practical approach to immunities and what they imply for some specific procedures in the criminal justice system is set out in the revised Guidelines on parliamentary immunities.

3. Situations in which members of the Assembly have faced restrictions or bans on their freedom of movement preventing them from fulfilling their functions and travelling as members of the Assembly

22. From the outset it is important to underline that restrictions on members travel have different forms and natures and therefore the methods to address them are also necessarily different. In the questionnaire and in my interactions with members I have sought to better understand the type and nature of the obstacles to the free movement of members of the Assembly. The following obstacles have been identified:

- the internal rules or practices of national parliaments, which restrict travel or prevent participation for example due to (i) a lack of funding; (ii) restrictions on the participation of substitutes/alternates; (iii) politically-motivated constraints on attendance of opposition members of the delegation by the Head of Delegation or the Speaker; or (iv) national parliaments or political groups preventing members’ travel when there are votes in national parliaments;

- exit restrictions preventing members from leaving a country (this tends to be rare, but can occur in times of martial law, or due to health restrictions as it was the case for example during the Covid-19 pandemic);
- entry restrictions for example relating to visas, but also blacklists of parliamentarians subject to sanctions;
- travel restrictions imposed as a result of ongoing criminal proceedings which can prevent or impede members from fulfilling their functions as members of the Assembly (for example a travel ban, house arrest, curfew or detention).

3.1. Summary of the replies to the questionnaire

23. On 18 December 2024, I sent a questionnaire to the secretaries of the national delegations to the Assembly. Eighteen delegations replied and I produced an information note summarising the responses.⁸ Replies were received from Andorra, Austria, Belgium, Bulgaria, Croatia, France, Germany, Ireland, Italy, Latvia, Liechtenstein, Malta, the Netherlands, North Macedonia, Portugal, Slovenia, Spain and Sweden.

24. The responses covered the composition of national delegations, rules relating to funding of travel, parliamentary travel restrictions (such as due to timetabling clashes), the impact of criminal proceedings affecting the free movement of members of the Assembly, and entry and exit restrictions.

25. As concerns the composition of national delegations, most countries used proportional methods to allocate seats such as the D'Hondt system, sometimes involving consideration of the overall balance across representation in international parliamentary assemblies. Most countries give autonomy to parties or parliamentary groups, giving them the possibility to directly nominate their candidates. The formal approval stage of delegations varies. Some countries require a plenary vote to approve the composition of the delegation, and for some, the composition of the delegation can be affected through the need for the plenary vote.

26. As concerns rules relating to the funding of travel, in most countries, all members can attend and were funded to attend plenary meetings of the Assembly. In many countries, alternates only have funding to attend committee meetings in the absence of the full member of a committee, whereas in others, full members and alternates of a committee can attend committee meetings. Many delegations operate under a global budget or envelope, and in some countries, travel is subject to budget availability or prior approval.

27. In relation to travel restrictions and parliamentary priorities, formal parliamentary restrictions on Assembly participation are rare, but there are few notable exceptions concerning Andorra, Germany, Malta, North Macedonia or Spain. In all countries, national political priorities and practices significantly influence decisions on attendance, particularly when there are key votes in the national parliament. Most countries offer members considerable autonomy in attendance decisions, but decisions about travel are often guided by political groups or parliamentary leadership.

28. Only a few countries have formal mechanisms in place in order to address conflicts between national and international responsibilities. Examples include the organisation of plenary and committee meetings and votes so as to avoid clashes with the Assembly,⁹ the possibility to delegate a vote in national sessions when attending Assembly meetings,¹⁰ a return journey being offered during an Assembly session to return to vote,¹¹ pairing systems allowing coalition and opposition parties to balance votes and absences,¹² coordination of the parliamentary agenda to account for absent Assembly members,¹³ online participation,¹⁴ and remote voting.¹⁵

29. No respondent country imposes formal exit restrictions. As concerns visas, some countries do not generally require visas for Assembly members who hold diplomatic or official passports, whereas other do, often depending on the type of passport and the issuing country. National authorities provide various forms of support in obtaining a visa, such as notes verbales, expedited processing, or waiving the visa fee when official

8. See Information Note AS/Rul(2025)11 op. cit.

9. Andorra, Austria and North Macedonia.

10. Andorra, Bulgaria, France and Liechtenstein.

11. Belgium.

12. Austria, Ireland, the Netherlands and Sweden.

13. Malta.

14. North Macedonia.

15. Spain.

mission status is confirmed, however practice varies considerably. The Council of Europe laissez-passers is not typically sufficient to justify entry on its own, and official mission verification, for instance through a note verbale, remains necessary in most countries. There is a wide disparity in the awareness and recognition of the laissez-passers, ranging from it seeming to be of little significance, to enabling visa-free access.

30. As concerns criminal proceedings affecting the free movement of members of the Assembly, laws and practices vary between different Council of Europe member States. The majority of respondent countries have little familiarity with any cases of travel restrictions related to criminal proceedings being imposed on parliamentarians, whether because this is not possible or because it does not occur in practice. Others would request to waive immunity in order to restrict a parliamentarian's freedom of movement (for example France, Germany, Latvia). In North Macedonia and Portugal court permission would be needed for a parliamentarian to travel on Assembly business if the court imposed travel restrictions during a criminal investigation.

3.2. Armenia and the imposition of travel restrictions on a member of the Parliamentary Assembly

3.2.1. The background to the visit and the case concerning Mr Gevorgyan

31. In the context of the work on this report I visited Armenia on 19-20 May 2025. Armenia was chosen for this visit because, in the context of an ongoing criminal case, a member of the Assembly, Mr Armen Gevorgyan (Armenia, ECPA), is subject to travel restrictions that have impacted his ability to participate in the work of the Assembly as part of his functions. A number of letters have been written from successive Presidents of the Assembly to the Armenian authorities to set out Mr Gevorgyan's immunity as a member of the Assembly and the legally binding obligations on Armenia under GAPI. The purpose of the visit was not, in any way, to enquire into or to seek to influence that criminal case which clearly falls outside of the remit of this report. My interest for the purposes of this report was the practical experience of the operation of the judicial travel ban on a sitting member of the Assembly.

32. Although it would not be appropriate, in the context of this report, to go into details concerning the criminal case, just to assist understanding, Mr Gevorgyan is subject to criminal charges relating to two separate factual contexts with both cases pre-dating his election to parliament and thus being a member of the Assembly:

- Mr Gevorgyan, together with others, was investigated and charged in 2018 in connection with the use of force by the national police and military forces on 1 March 2008 to disperse the protesters as a result of which 10 people were killed.
- Mr Gevorgyan was charged in 2021 following an investigation into allegations of bribery and of money laundering.

33. Mr Gevorgyan, and his co-defendants, dispute these charges. Mr Gevorgyan considers that the prosecution is politically motivated. Many procedural arguments have been raised, including in relation to (i) the respect for and extent of Mr Gevorgyan's Armenian parliamentary immunity; (ii) the respect for Mr Gevorgyan's immunity as a member of the Assembly; (iii) the statute of limitations; (iv) conduct of the judiciary including in relation to impartiality and independence; and (v) sufficient expedition in the conduct of the proceedings.

3.2.2. Parliamentary immunity in Armenia and its relevance to Parliamentary Assembly immunities

34. Parliamentary immunity in Armenia protects a member of parliament from the initiation of criminal proceedings and from deprivation of liberty (except for a maximum of 72 hours in cases of in *flagrante delicto*) unless the authorities have obtained the consent of the National Assembly (Article 96(2) of the Armenian constitution). A 2021 judgment of the Constitutional Court clarified that Article 96(2) requires the immediate release of individuals in detention who are subsequently elected as members of parliament. It also provided that where a criminal prosecution against a person was initiated prior that person being elected to the National Assembly, there was no requirement to obtain the consent of the National Assembly in order to continue with the criminal prosecution against that person (namely a member of parliament is not immune from the further continuation of a criminal prosecution brought prior to his or her election to parliament). In this respect, it is worth recalling that Mr Gevorgyan was elected as a member of parliament in 2021 and the prosecution pre-dates his election as a member of parliament.

3.2.3. Operation of the travel ban in the context of criminal proceedings and Article 13 GAPI

35. A travel ban has been imposed upon Mr Gevorgyan as part of “preventive measures” imposed in the context of these proceedings since 2018. It is arguably one of the less burdensome measures than can be imposed upon a defendant as alternatives include bail (involving the payment of a security) or a full travel prohibition (with no possibility of authorising travel).¹⁶ For each Assembly meeting, this measure requires Mr Gevorgyan to obtain the permission of the body, responsible for the criminal proceedings (Court or Investigator), requiring him to file a motion and to have a hearing before the judge to seek authorisation with all the legal, time and other costs that this implies. Mr Gevorgyan has encountered numerous difficulties in leaving the country since 2018, including since becoming a member of parliament and a member of the Assembly in 2021. In determining authorisation for travel, it appears that the court is not always aware that there is a legal obligation to authorise Assembly travel under GAPI. In particular:

- From 2021-2022 Mr Gevorgyan was denied authorisation to attend meetings of the Assembly by the judicial and/or investigative authorities. On 7 April 2022, the then President of the Assembly, wrote a letter confirming and defending Mr Gevorgyan’s immunities as a member of the Assembly. Subsequent letters were also sent to the Armenian authorities in 2022 and 2023 asking the Armenian authorities to take the necessary measures to enable Mr Gevorgyan to attend meetings of the Assembly. Some travel was authorised during 2022 and 2023, although there continued to be some difficulties.
- The first instance judge in Mr Gevorgyan’s case was dismissed on 16 July 2024 and was not replaced until September 2024. During this period, Mr Gevorgyan was prevented from travelling due to the lack of a judge to authorise travel. In September 2024, the President of the Assembly, wrote a letter to the Speaker of the Armenian Assembly recalling Mr Gevorgyan’s privileges and immunities under GAPI and raising concerns at his being prevented from attending meetings of the Assembly.
- In November 2024 the anti-corruption court denied Mr Gevorgyan’s request to attend the meeting of the Committee on Social Affairs, Health and Sustainable Development on 5-6 December 2024. On 22 November 2024, the President of the Assembly consequently wrote to the Speaker of the Armenian Assembly, again underlining the internationally binding obligation on the Armenian authorities not to restrict the movement of members of the Assembly in attending Assembly meetings and seeking the Speaker’s assistance. Ultimately, Mr Gevorgyan was able to attend the December meeting.
- In March 2025, there were continued concerns that the court was reluctant to issue travel authorisations for Mr Gevorgyan to attend Assembly meetings. On 4 April 2025, the President of the Assembly sent a further letter to the Speaker of the Armenian National Assembly again outlining the obligations under GAPI. Since then, Mr Gevorgyan has been able to attend Assembly meetings, however the administrative requirements remain unduly heavy.

36. The operation of the travel ban is complex because, instead of allowing for all Assembly travel, the body responsible for the criminal proceedings (the judge or investigator) requires a separate motion to seek authorisation for each and every Assembly meeting individually, which is clearly time-consuming, and creates an unnecessary practical barrier to the effective operation of Article 13 GAPI. In addition, the authorities do not seem to distinguish between Assembly travel that ought to be protected as of right under GAPI, and other “business trips”, seemingly considering them all as a discretionary matter for the judge.

37. In my meetings there seemed to be varying degrees of awareness of the existence and requirements of GAPI. There was general awareness that, under Armenian law, internationally binding obligations on Armenia, such as GAPI, were a legally binding part of Armenian law – and indeed of a higher normative value than ordinary Armenian law. However, familiarity with GAPI and its requirements seemed less clear.

38. Better training and information for investigators, prosecutors and the judiciary on their legally binding obligations when dealing with cases concerning parliamentary immunity, and specifically immunities of Assembly members under GAPI, could assist in addressing the sorts of difficulties that have arisen in Mr Gevorgyan’s case.

16. Since the changes to the criminal procedural code that entered into force in 2022, the “signature” travel ban is no longer a permitted preventive measure. However, the court has not yet reviewed the continued appropriateness of this measure in Mr Gevorgyan’s case so as to lift it and/or potentially replace it.

3.3. Other case studies from recent years

39. Successive Presidents of the Assembly have intervened to defend the immunities of members of the Assembly over the years.¹⁷ Moreover, failures by member States to respect immunities under GAPI are not new.¹⁸ However, on other occasions, States have clearly sought the respect the requirements of GAPI, for example through requesting a waiver of immunity¹⁹ or through taking care to ensure free movement of members of the Assembly. In recent years, specific issues have arisen highlighting ongoing challenges to the respect for the immunities and free movement of members of the Assembly, as set out below.

3.3.1. Ukraine: administrative restrictions due to the operation of martial law

40. Since the Russian Federation's full-scale aggression against Ukraine, martial law has been declared in Ukraine. For members of the Verkhovna Rada – the Ukrainian Parliament – this requires approval by the Speaker of the Verkhovna Rada for each and every trip abroad, including travel in the exercise of their functions as members of the Assembly. Even if the imposition of martial law can be understandable given the extreme context, the requirements of martial law create administrative hurdles and therefore potential barriers to the timely organisation of travel for Ukrainian members of the Assembly.

41. Certain members of the Ukrainian delegation have faced barriers with travel being refused – or being threatened to be refused. Some of these issues stemmed from confusion as to which missions constituted travel “in the exercise of their functions” as members of the Assembly. It was necessary for the Assembly to explain to the Verkhovna Rada that travel to meetings of the Bureau of the Assembly and to the Standing Committee of the Assembly (for a chairperson of a committee who was thus a member of the Bureau of the Assembly) was also required, as part of the exercise of that member's functions as a member of the Assembly. This created a barrier to the travel on Assembly business of Mr Oleksii Goncharenko (Ukraine, ECPA), who has been chairperson of the Committee on Migration, Refugees and Displaced Persons since January 2024, and who is thus required to attend meetings of the Bureau and the Standing Committee as part of this role.

3.3.2. Members of the Assembly who are threatened by arrest warrants from the Russian Federation

42. For a number of years, and in particular since the Russian Federation's full-scale war of aggression against Ukraine, the Russian Federation has threatened various members of the Assembly with arrest warrants – whether in advance of, or subsequent to, purported criminal proceedings. This can create a chilling effect on travel for such members of the Assembly if they are not confident that their travel in the exercise of their functions as members of the Assembly will be protected and that they will benefit from full immunity from arrest or detention in relation to any such threats from the Russian Federation (or indeed other countries).

43. There have also been concerns that the Russian Federation may seek to abuse the Interpol process to try to seek an arrest warrant through Interpol, for example in relation to Mr Oleksii Goncharenko (Ukraine, ECPA). I consider it appropriate for the Assembly to underline to Interpol the immunities from arrest or prosecution that exist for members of the Assembly that are travelling in the exercise of their functions as

17. For example, in 2024 as concerns the arrest and prosecution of Mr Marcin Romanowski in Poland; since 2022 relating to the prosecution and hindrance of free movement of Mr Armen Gevorgyan in Armenia; in 2015 as concerns Ms Nadiia Savchenko (a Ukrainian member of the Assembly detained in the Russian Federation); in 2014 concerning Mr Dick Marty (a Swiss member of the Assembly in respect of a request for him to attend court in Kosovo* as a witness); in 2002 and 2004 in respect of an Italian member of the Assembly, Senator Raffaele Iannuzzi, concerning two prison sentences relating to matters pre-dating his parliamentary mandate; in 1994 as concerns Mr Paolo Caccia an Italian member of the Assembly arrested while he was still a member of the Assembly (but after the Italian Parliament had been dissolved); in 2000-2001 relating to the detention of Mr Ilie Ilascu a Romanian member of the Assembly detained by the “Transnistrian” authorities.

*All reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

18. A notable case where national parliamentary immunity was lifted, but there was no request to waive Parliamentary Assembly immunity, concerns Türkiye (relating to the prosecution in 2018 of Ms Filiz Kerestecioğlu Demir for words spoken in a debate in the Assembly).

19. See for example, the request to waive the immunity of Mr Silvio Berlusconi from the Spanish Supreme Court of Justice in 2001 (no decision was taken due to Mr Berlusconi's resignation from the Assembly) and the Polish request to waive the immunity of Mr Marcin Romanowski in 2024 (which resulted in a 2024 decision by the Assembly to waive his immunity).

members of the Assembly. As a consequence, arrest warrants would not be appropriate. Moreover, I consider that Interpol should be made aware of the highly politically motivated nature of these purported criminal proceedings in the Russian Federation.

3.3.3. Assembly members who face administrative barriers to travel on Assembly business

44. At times, members of the Assembly report having their proposed travel in the exercise of their functions restricted or refused by the administration of their national parliament. It is not always clear the reason for (1) the imposition of bureaucratic administrative methods for approving travel on Assembly business; or (2) refusals in individual cases.

45. Sometimes it seems that travel has been refused due to political reasons – for example because the Head of Delegation or Speaker was from a different political group than the member of the Assembly and the refusal was a result of personal or political animosity. Such barriers and refusals are of course an impermissible reason to interfere with the free movement obligations and rights under GAPI, and undermine the democratic, pluralist nature of the work of the Assembly, especially if opposition members are prevented from attending due to inappropriate controls and restrictions by senior members of the ruling majority.

46. At other times, restrictions have been imposed due to specific votes taking place in the national parliament. Whilst it is understandable that politicians will have views on the desirability of members staying in the national parliament for specific votes, it should be for members of the Assembly (having regard, of course, to the views of their political groups and the Speaker, and others) to decide to attend a meeting of the Assembly or to prioritise other matters. It is the responsibility of the member of parliament themselves to decide on their own priorities, as it is that member who is accountable to their electorate for their decision-making and prioritisation.

47. A concern was raised that travel had been refused for certain members of the Romanian delegation to attend the June 2025 part-session of the Assembly, apparently due to an important vote taking place in the Romanian National Assembly concerning the formation of the Government in Romania. Ms Dumitrina Mitrea (Romania, ECPA), in particular, was refused travel contrary to her wishes as a member of the Assembly (she did ultimately organise her travel herself).

48. Issues have arisen in the last few years in relation to a member of the opposition Ms Bisara Kostadinovska-Stojchevska (North Macedonia, SOC) being prevented from travelling (or having the approval of her travel delayed) seemingly due to a mixture of unduly complex administrative procedures requiring actions and approval by both the Head of Delegation and the Speaker of the parliament; together with challenges due to the member being from a different (opposition) party; and purportedly budgetary constraints. A clearer system to automatically approving all travel required as part of a national delegation's membership obligations would clearly assist in avoiding such unnecessary disturbances to the effective participation of members of a national delegation.

49. Travel restrictions are not limited to members of the Assembly, but also to observer members. For example, recent concerns have arisen that the Speaker of the Mexican Senate apparently refused permission to travel for the June 2025 part-session for Senator Marko Cortés Mendoza, a substitute member of the Mexican delegation to the Parliamentary Assembly who was supposed to be replacing the observer member. The suggestion was that this refusal was for political reasons, which again, would be an inappropriate reason to refuse travel and would affront the principles of pluralist democratic debate. [Resolution 2087 \(2016\)](#) and [Recommendation 2083 \(2016\)](#) have already highlighted that members of observer, special guest and partner for democracy delegations should benefit from similar immunity protections as for members of the Assembly.

3.3.4. Assembly members whose travel has been restricted due to budgetary or funding grounds

50. At times, members of the Assembly report having their proposed travel in the exercise of their functions restricted or refused on the grounds on budgetary or funding restrictions on the part of their national Parliament. This is rarely the case for travel to attend plenary sessions, but can occur for travel to attend committees, sub-committees or ad hoc committees or sub-committees.

51. As was clear from the questionnaire, whilst most national delegations fund travel to plenary sessions for all members of the national delegation, some countries suggested that they would only fund travel for substitute members when replacing a representative (for example Croatia, North Macedonia, Portugal, Slovenia and Spain). Moreover, whilst many countries would fund travel for both full members and alternate members of committees (for example France, Germany and Sweden), some countries would only fund travel for alternates if replacing a full member (for example Austria, Belgium, Croatia, Ireland, the Netherlands, North

Macedonia, Portugal, Slovenia and Spain). Andorra seems to limit committee attendance further by only funding travel to committees relevant to national interests of Andorra. Many national delegations were subject to a global budget or envelope, with specific limits in place (for example Croatia, Ireland and Portugal).

52. Specific issues have occurred in respect of travel by a former member of the Icelandic delegation, Ms Sunna Ævarsdóttir (Iceland, SOC), a particularly active member of the Assembly from January 2017 – January 2025, who had her travel refused on the grounds of budgetary limits to her travel for that year.

3.3.5. Azerbaijan's "blacklists" based on Parliamentary Assembly members' voting on Resolutions of the Parliamentary Assembly

53. Parliamentary inviolability for words spoken and votes cast in national parliaments, and in interparliamentary assemblies, is an essential element of all democracies and is reflected in Article 14 GAPI and Article 40 of the Statute of the Council of Europe.

54. Azerbaijan has reportedly developed a "blacklist" covering members of the Assembly who have voted in favour of certain Assembly resolutions, specifically [Resolution 2527 \(2024\)](#) "Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of Azerbaijan", or made speeches in conjunction with the work of the Assembly, that have displeased the Government of Azerbaijan.²⁰ Those on this "black list" are apparently prohibited from entering Azerbaijan. More recently, in April 2025, President Aliyev announced that the President of the Assembly has been added to that list.²¹

55. The so-called "blacklist" includes at least 77 members of the Assembly from Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Monaco, Norway, Portugal, Romania, San Marino, Slovenia, Spain, Sweden, Switzerland, Türkiye, and the United Kingdom. Thus, members of Parliament from 28 of the 46 Council of Europe members States are affected. The existence of a blacklist of Assembly members in response to votes and speeches in the hemicycle demonstrates a lack of good faith in Azerbaijan's approach to its membership obligations.

56. The conduct of the Azerbaijani authorities has not been limited to making lists, but has an effect on Assembly members' free movement. For example, a Swiss member of the Assembly, Mr Niklaus-Samuel Gugger, is on the "blacklist". Mr Gugger, who was supposed to participate in an OSCE PA election observation mission in Azerbaijan, was stopped at immigration control and detained for 3 hours at the airport by the police, who refused entry, confiscated his passport, and then returned him to Türkiye – his passport only being returned to him on his arrival in Türkiye.²²

3.3.6. Poland and the case of Mr Marcin Romanowski

57. The arrest and prosecution of Mr Marcin Romanowski (Poland, ECPA) in Poland, in 2024, prompted the defence of his Assembly immunity by the President of the Assembly, a request by the Prosecutor General of Poland to waive the immunity of Mr Romanowski, and the adoption of a resolution of the Assembly waiving the immunity of Mr Romanowski.²³

58. Subsequent to the waiving of his parliamentary immunity, Mr Romanowski left Poland to evade the Polish justice system and has since been living in Hungary. Since then (that is to say since Autumn 2024) Mr Romanowski has not attended any meetings of the Sejm (the Polish Parliament) or of the Assembly.

59. Mr Romanowski's name did not appear on the list of the Polish delegation when their credentials were presented in January 2025 – instead there was a blank space for one of the PiS members (Mr Romanowski's political group). My understanding is that PiS wished for Mr Romanowski to remain a member of the Assembly but that the authorities of the Sejm (including the Speaker) removed his name given that he was no longer attending meetings of the Sejm and was instead evading the Polish justice system by living in Hungary. The Sejm authorities invited PiS to present an alternate candidate, but they refused to do so – a blank space was therefore retained on the list of the Polish national delegation for PiS, in line with the fair representation of

20. "Azerbaijan: PACE President reacts to ban on certain PACE members entering the country"; "PACE President calls out Baku's decision to blacklist 76 delegates" – Public Radio of Armenia; "PACE President Condemns Azerbaijan's Blacklisting of Members as Harmful" – Caucasus Watch.

21. PACE President included in Baku's blacklist: Azerbaijani Foreign Ministry.

22. "Baku deports Swiss election monitor and Nagorno Karabakh supporter"; "Swiss politician criticizing Baku for aggression in Nagorno-Karabakh was not allowed to enter Azerbaijan".

23. [Resolution 2572 \(2024\)](#) "Request for waiver of the immunity of Mr Marcin Romanowski".

political parties or groups in the delegation. On 26 June 2025, under the authority of the Rules Committee, I wrote to Ms Agnieszka Pomaska (Poland, EPP/CD) as head of the Polish national delegation asking that she inform me of the procedure and the decision-making process that led to the removal of Mr Romanowski from the Polish delegation in January 2025. In particular, I asked to know (i) what was the position of the PiS party; (ii) who decided to exclude Mr Romanowski from the national delegation; (iii) what were the reasons for that decision to exclude Mr Romanowski; and (iv) what was the decision-making process. At the time of drafting this report, I had not received any response to this letter.

4. Conclusions and proposals

4.1. Administrative barriers imposed by the national parliamentary authorities

4.1.1. Composition of the national delegation

60. Free movement of Assembly members can obviously be impacted through changes to the composition of a national delegation. National delegations to the Assembly should, consistent with the principles of fair representation and gender representation, and as required under Rule 6 of the Rules of Procedure, reflect the political composition of the relevant national parliament.

61. Moreover, subject to a national parliament's internal procedure and in accordance with the principles on fair representation established in [Resolution 1798 \(2011\)](#) "candidates proposed by a political group should in general be accepted as members – representatives or substitutes – if they meet the criteria of the national procedural rules".²⁴ This is obviously subject to the requirement (in Rule 6.2.c of the Rules of Procedure) for all members of the Assembly to undertake to respect the aims and basic principles of the Organisation and to undertake to comply with the Code of Conduct of members of the Parliamentary Assembly.

62. The decision to remove a member's name from the national delegation despite that member being proposed by their political group in accordance with the fair representation split, is significant as (1) it prevents that member from participating in the work of the Assembly; (2) national delegations are often formed and selected for the duration of that national parliament so it can interfere with an agreed split; and (3) in the spirit of fair representation, I consider that, in principle it should be for national political groups to select their members on the national delegation (without interference from other political groups, the speaker or the presidential committee). In my opinion, it is the reputation of the political group that is engaged in their selection of their members and it is not for others to interfere.

4.1.2. The approach of the parliamentary and political authorities to attendance and funding travel to meetings of the Parliamentary Assembly

63. Whilst the majority of national delegations and national parliaments demonstrate good practices with regard to facilitating attendance and funding travel to members to attend meetings of the Assembly, there are some variations. Impediments often arise due to a lack of awareness of the legal obligations flowing from membership to the Assembly, or due to the imposition of unnecessarily heavy administrative practices that can operate as a hindrance to full and timely participation in the work of the Assembly. I consider that the below standards reflect the obligations inherent in membership and should be practiced by all national delegations:

- Attendance at all meetings of the Assembly should be facilitated and parliaments must endeavour to eliminate all purported "controls" by parliamentary or political authorities over which Assembly members may travel to its meetings. There should be no discretion in issuing authorisations for members with a right to attend a meeting and any authorisation should be done well in advance of the meetings, ideally approving all attendance at all foreseeable meetings of the Assembly for the whole session.
 - Budgetary considerations are not a justification for refusing travel to committee members or other members with a role to play in Assembly meetings.
64. At a minimum, attendance should be guaranteed and funded by the national parliament for:
- travel to plenary meetings (namely part-sessions) for all members of the national delegation (representatives and ideally also substitutes);

24. See [Resolution 1798 \(2011\)](#) "Fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly", para. 6.11.

- travel to committee meetings for:
 - full members of a committee;
 - alternate members of a committee when replacing a full member; the alternate is a rapporteur and they have a report on the agenda of the committee meeting, or are presenting themselves as a candidate for election/appointment as a rapporteur;
- travel to meetings of the Standing Committee, Bureau or Presidential Committee where a member's presence is required due to their obligations to their political group, national delegation, committee, or in respect of a report.

65. In case of conflicting obligations on a member of the Assembly, it should be for that member to determine (having regard to their own and their political group's priorities) how to balance their competing obligations as a member of the Assembly, a member of their national parliament, and any other relevant considerations that affect that individual member. Their attendance should not be "permitted" or "refused" by any other authority.

4.2. Entry and exit requirements

4.2.1. Visas and entry and exit requirements

66. Some countries continue to require visas for members of the Assembly travelling on Assembly business. I propose that all member States should review their visa requirements for members of the Assembly travelling on Assembly business, to ensure that (1) the length and complexity of the form; (2) the cost; and (3) the time taken in delivering the visa, is reduced to the minimum necessary, in accordance with the prohibition in Article 13 GAPI on "administrative or other restrictions" impeding free movement of members of the Assembly.

67. The approach of the border authorities in Schengen countries – and in particular those of France, Germany and Switzerland – is particularly important given that the plenary meetings of the Assembly take place in Strasbourg and the majority of the committee meetings outside of Strasbourg take place in Paris. Whilst the French and German authorities have confirmed that their border guards are informed about the existence of the Council of Europe laissez-passers, in practice it seems that many French and German border guards are unfamiliar with the Council of Europe, with the obligation to facilitate travel of Assembly members to meetings of the Assembly, or with the Council of Europe laissez-passers. It can occur, for example, that border guards seem to limit or count the number of days that an Assembly member has spent in the Schengen zone for Assembly meetings, suggesting that entry will be denied if the quota of Schengen days has been surpassed due to attendance at Assembly meetings. Whilst normally this is unlikely to result in a member being returned from the airport in Frankfurt or Paris, it can result in members of the Assembly being significantly delayed at border controls. I propose to call on Schengen countries – and in particular, France, Germany and Switzerland – to ensure that their border guards are properly informed about the Council of Europe (and not only the European Union), the General Agreement on Privileges and Immunities and the Council of Europe laissez-passers, so as to avoid future confusion.

68. I consider that in general there should be no exit requirements for members of the Assembly and that where these are required for exceptional reasons (such as martial law), then the procedures should not be administratively burdensome. Any authorisations should be either automatic or at the very least done swiftly and should cover all official duties of members of the Assembly. In order to avoid future confusion as to the official duties of members of the Assembly, I propose to set out, in Rule 73 of the Rules of Procedure, as well as in the Guidelines on parliamentary immunities, a non-exhaustive list of the official duties covered by the Assembly immunities.

4.2.2. So-called "blacklists" based on Parliamentary Assembly members' voting and opinions expressed within the Assembly

69. Parliamentary inviolability for words spoken and votes cast in national parliaments, and in interparliamentary assemblies, is a core democratic principle common to democratic States and is reflected in Article 14 GAPI and Article 40 of the Statute of the Council of Europe.

70. I propose to specify in the Guidelines on parliamentary immunity that “It is inherent in Article 14 as read with Article 13 GAPI that the imposition of sanctions, entry or exit restrictions or so-called “blacklisting” of members of the Assembly in consequence of words spoken or votes cast in debates of the Assembly is a violation of the GAPI, of democratic principles and of a State’s obligations as member of the Council of Europe.”

4.3. Criminal investigations and proceedings: travel bans or restrictions affecting a member’s ability to travel

4.3.1. Travel bans and immunities of Parliamentary Assembly members

71. Article 13 GAPI is an internationally binding obligation on all member States of the Council of Europe not to impose any administrative or other restrictions on the free movement of Assembly members to and from meetings of the Assembly. Granting an authorisation for an Assembly member to attend an Assembly meeting is not a discretionary matter for any parliamentary, executive, judicial, prosecutorial, investigative or other authority; it is a clear legally binding obligation.

72. It flows from this, that the imposition of a travel ban on an Assembly member, preventing that member’s travel to Assembly meetings without the explicit authorisation from a judge, prosecutor or investigator is contradictory to Article 13 GAPI. This is also reflected in Rule 73(6) of the Rules of Procedure which specifies that “in the event of a member of the Assembly being arrested or deprived of freedom of movement... the President of the Assembly may take the initiative of confirming the privileges and immunities of the member concerned”.

73. Whilst Article 15 GAPI makes clear that immunity can be waived if a judicial authority wishes to detain a member, Articles 13 and 15 are not explicit as to the procedure to be followed where an authority wishes to impose the lesser measure of a travel ban. Ideally a travel ban would not be imposed upon a member of the Assembly as this clearly interferes with their mandate and their ability to fulfil their functions as a member of the Assembly. However, it is foreseeable that a court may wish to restrict travel so as to ensure that a defendant does not evade justice. Whilst detention could be an option (that would require a request to waive immunity), the principles of justice require that detention is not used if a lesser option (such as a travel restriction or bail) is available. If a judicial, prosecutorial or investigatory authority wishes to impose a travel restriction, a waiver of immunity would, however, be required given the requirements of Article 13 and 15 GAPI as read together. Therefore, reading together Articles 13 and 15 GAPI, it is clear that a travel restriction cannot be imposed upon a member of the Assembly unless the Assembly has expressly waived that immunity.

74. Consequently, in Article 73 of the Rules of Procedure and the Guidelines on Parliamentary Immunities it is necessary to clarify that:

- a travel ban (whether an absolute travel prohibition or a travel ban requiring judicial authorisation for travel) may only be applied to an Assembly member following a waiver of immunity by the Assembly under Article 73 of the Rules of Procedure. Article 73 of the Rules of Procedure and the guidelines in Annex III of the Rules of Procedure should be updated to clarify this;
- a travel ban which does not apply to travel to meetings of the Assembly does not require a waiver of immunity by the Assembly. Notification (but not authorisation) of attendance at Assembly meetings can be part of such a travel ban. In such circumstances a list of planned Assembly meetings for the year (session) can be communicated in advance to the relevant authorities, and supplemented where additional meetings for that Assembly member are introduced into the calendar.

75. It is important that investigating, judicial and prosecutorial authorities are aware of the requirements of GAPI and what this means if they are dealing with a case involving a member of the Assembly. Necessarily, issues of parliamentary immunity, and specifically Assembly immunity, will arise only rarely in the work of most criminal investigators, prosecutors and judges. It is therefore important that they are aware of the need to seek out the relevant guidance in cases where such issues arise. To assist the Assembly should update the Guidelines on parliamentary immunities (which currently only address Articles 14 and 15 GAPI; not Article 13 GAPI) and ask that the guidelines be incorporated into or referred to, as appropriate, in national guidance to the relevant investigations, prosecutorial and judicial authorities.

76. It is important that the Guidelines on the scope of parliamentary immunities take a practical approach to assist prosecutorial and judicial authorities navigating specific practical challenges and questions (such as detention, prosecution or travel restrictions) and not only a principled approach which can perhaps be less

clear for practitioners unfamiliar with the requirements of GAPI. I propose that the Assembly require all national authorities to disseminate those updated guidelines and to take the necessary steps to ensure that they are reflected in national guidance and training for investigators, prosecutors and judges. The Assembly could additionally consider whether a HELP (European Programme for Human Rights Education for Legal Professionals) course based on the guidelines could assist with this.

77. Further, it is important that national investigative, prosecutorial, judicial and parliamentary authorities understand the extent and application of their own parliamentary immunity protections. This is important as a matter of the rule of law, so that the law is applied uniformly and correctly, and because it has a bearing on the application of Article 15 GAPI. I consider that all national authorities should communicate to the Assembly secretariat and through it to the Rules Committee, the extent and application of their national parliamentary immunity laws. The results of these communications should be collated and published on the Assembly website to improve the clarity and understanding of the operation of Council of Europe member States' respective parliamentary immunity laws and their interaction with Article 15 GAPI.

4.3.2. Procedure to follow where a waiver of immunity of a member of the Parliamentary Assembly may be necessary under Articles 13 and 15 GAPI

78. Where an investigative, prosecutorial or judicial authority wishes to impose restrictions on a member of the Assembly, or perhaps may even have imposed restrictions on a member – whether through a travel ban, detention or through the instigation of criminal prosecution without the necessary waiver of immunity, the following actions should be taken:

- The parliamentary authorities (normally the Speaker of the Parliament) should write to the relevant authorities underlining the existence of the immunities under GAPI and the legal impossibility of imposing the relevant restriction (travel ban, detention or – if applicable – instigation of prosecution) without the waiver of immunity from the Assembly. This letter should explain the procedure for requesting the waiver of immunity, and the importance of not imposing (or annulling the imposition of) any such measures unless and until such immunity has been waived.
- If necessary, the President of the Assembly should write to the Speaker of the Parliament recalling the immunities under GAPI, asserting the defence of the immunity of the relevant member of the Assembly, and asking the Speaker to take the relevant steps to ensure that the national authorities (including the executive and judicial authorities) are fully aware of these obligations and of the steps to be taken to seek a waiver of immunity before the imposition of any travel ban, detention or – if applicable – instigation of prosecution.

79. The Guidelines on the scope of parliamentary immunities should be updated to make clear the procedure for seeking the waiver of immunity as follows (subject to any national procedural requirements that may apply):

- the “competent authority” (usually the judge in charge of case, the public prosecutor or the Minister of Justice) must submit a request addressed to the President of the Assembly, in writing, seeking a waiver of immunity;
- the request for the waiver of immunity must specify the reasons for the request, specifically what the waiver of immunity relates to including:
 - whether the request is to waive immunity for the purposes of (1) detention; (2) restriction of free movement (for example a travel ban or other travel restrictions); and/or (3) initiation of prosecution;
 - the charges or offences to which the request relates;
 - whether any lesser measures have been considered that would still enable the member's full participation in the activities of the Assembly (and if so, what measures and any reasoning as to why they have or have not been pursued).

4.3.3. Updating the “Guidelines on the scope of the parliamentary immunities enjoyed by members of the Parliamentary Assembly” in Annex III of the Rules of Procedure and amending Rule 73 of the Rules of Procedure

80. I propose making amendments to Rule 73 of the Rules of Procedure to further clarify the circumstances in which immunities apply, the procedures to be followed in case assistance is required to assert immunity, the circumstances in which a waiver of immunity is required, and to specify that a waiver of immunity is required prior to:

- imposing travel restrictions of a member of the Assembly (unless the restriction expressly does not apply to travel on Assembly business);
- detaining a member of the Assembly;
- in the case of the member’s national country, initiating the prosecution of a member of the Assembly if such a waiver of immunity is required under national law; or
- in all other member States, initiating a prosecution of a member of the Assembly.

81. I propose updating the Guidelines on Parliamentary Immunities which currently only cover Articles 14 and 15 GAPI, to:

- additionally cover Article 13 GAPI;
- include a section destined as a “how to” guide for investigators, prosecutors and judges when dealing with criminal cases concerning members of the Assembly. This should clearly set out the correct procedure to follow if requesting a waiver of immunity (in light of the experience of the cases of Mr Marcin Romanowski and Mr Armen Gevorgyan). The aim is that these guidelines can serve as a template for national authorities when developing their internal guidance on the steps to follow when dealing with criminal cases against members of the Assembly.

4.4. Consequences for a failure by a national delegation or a member State to respect its obligations under the General Agreement on Privileges and Immunities

82. At present the respect for, and enforcement of, the GAPI is largely dealt with by the President of the Assembly in dealing with individual issues that arise, in line with Rule 73(6) of the Rules of Procedure. Most issues or potential issues can be resolved expeditiously through informal or formal discussions, which can involve letters and meetings of the President of the Assembly and steps being taken by the relevant national authorities to prevent a repetition. However, on occasion, issues persist.

83. It is necessary to explore potential actions for the Assembly to clearly assert and defend immunities of Assembly members in cases where immunities under GAPI are not respected. This could be through the President making a statement during a part-session, noting any recent impediments to free movement of members of the Assembly and calling for the relevant State and its competent authorities to take the necessary steps to prevent the recurrence of such violations of the obligations set out under the GAPI. I propose an amendment to Rule 73 to make clear this possibility as a mechanism of encouraging compliance with GAPI, and in particular with the free movement provisions of GAPI.