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Ensuring protection against attacks on a person's honour and reputation

Report¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

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Summary

Freedom of expression, the guarantor of political pluralism and independence of elected representatives in the exercise of their duties, is protected by the immunity that parliamentarians have from prosecution in respect of the opinions they express. This freedom should, however, be exercised with respect for other fundamental rights and freedoms, including the right to respect for private life.

False, unfounded allegations made in the course of a Parliamentary Assembly debate could, indeed, seriously undermine a person's honour and reputation, whether a member of the Assembly or not.

The Committee on Rules of Procedure, Immunities and Institutional Affairs proposes to amend the provisions of Rule 21 of the Assembly's Rules of Procedure ("Maintenance of order") so that its provisions also cover affronts to a person's reputation and honour through the violation of respect for private life, as well as adding a specific provision on maintenance of order to the rules on procedure in committee. It also proposes to introduce a new procedure enabling any person directly concerned by a statement to express his or her disagreement with it by means of a right of reply.

1. Reference to committee: [Doc. 12059](#), Reference 3642 of 29 January 2010.



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A. Draft resolution ²

1. Freedom of expression, enshrined in Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, is a fundamental right and one of the pillars of a democratic society, to which the Parliamentary Assembly has on many occasions expressed its deep commitment. The freedom of public debate and the right to communicate and publish freely constitute the cornerstone of democracy insofar as they guarantee the pluralism of political expression.
2. Freedom of expression, “while precious for all, is particularly so for an elected representative of the people”, as stated by the European Court of Human Rights, is essential for the discharge of parliamentarians’ duties and is an essential precondition for their independence. Nonetheless, the immunity attached to parliamentarians’ freedom to express their opinions and cast their votes should not be misused for aims other than its primary purpose, which is the protection of free debate in the public interest.
3. This freedom should be exercised with a sense of responsibility vis-à-vis another fundamental right, also enshrined in the European Convention on Human Rights, namely the right to respect for private life. Accordingly, it is imperative to strike a fair balance between freedom of expression in the Assembly and the protection of a person’s reputation and honour. Statements which are totally unfounded and unrelated to the context of the debate do not contribute to the constructive dialogue in which the members of the Assembly are engaged.
4. Certain serious allegations regarding members of the Assembly or persons who are not members of the Assembly have recently been made by Assembly members. The people against whom the allegations were made considered these allegations to be an affront to their honour and reputation.
5. The Assembly’s Rules of Procedure comprise provisions relating to the discipline of members in plenary sittings, granting the President of the Assembly certain prerogatives so as to ensure the smooth conduct of debates. The Assembly notes, however, that there is a case for supplementing the current provisions in order to be able, where necessary, to effectively prevent any attacks on a person’s honour and reputation which may occur in the plenary sittings of the Assembly or in committee meetings.
6. Furthermore, the Assembly considers it necessary to provide for a mechanism whereby an individual who believes that his or her reputation or honour has been harmed by statements made in an Assembly debate can, subject to certain conditions, have a right of reply.
7. Accordingly, the Assembly decides to amend its Rules of Procedure as follows:
 - 7.1. in Rule 21.6, after the words “Words or expressions which affront human dignity”, add the words “, undermine the right to respect for private life,”;
 - 7.2. modify Rule 45.6 as follows:

“The Chairperson shall open, suspend and close the meeting and shall direct the committee’s debates. He or she may take part in the committee’s debates. He or she does not participate in a vote except in the case of a tie. He or she shall ensure observance of the Rules and maintain order”.

2. . Draft resolution adopted by the committee on 21 June 2011.

8. 8.1. Furthermore, the Assembly decides to supplement the additional provisions relating to Assembly debates, by introducing a right of reply in the event of a violation of the right to respect for private life:

“vii. Protection against attacks on a person's honour and reputation (Rule 21.6 of the Rules of Procedure) – right of reply

1. Any member of the Assembly who has been named or referred to directly and considers that his or her reputation has been adversely affected by a statement made in the course of a debate by another member may ask the President of the Assembly to take the floor for not more than two minutes at the end of the debate. The President has the discretion to decide on how to respond to such a request. He or she may ask the person who made the statement to provide an explanation.

2. Any person who has been named or referred to directly and considers that his or her reputation has been adversely affected by a statement made in the course of a debate by a member of the Assembly may submit a written request to the President of the Assembly for an appropriate response to be included in the record.

3. The written request shall be reasoned, make reference to the impugned statement in the record and shall not contain any vexatious or offensive wording; it shall be submitted within three months of the date of the sitting during which the statement at issue was made.

4. The President shall examine the request and decide:

either to include in the record a note in respect of the impugned statement along the following model: “By letter dated ..., [person's name] disagrees with the assertion/statement appearing in this record, on the ground that ...”;

or not to include such a note.

5. This provision shall not apply if the words spoken have been struck from the record in accordance with Rule 21.6”.

9. These amendments to the Rules of Procedure shall enter into force with effect from the opening of the Assembly's 2012 ordinary session.

B. Explanatory memorandum by Ms Bemelmans-Vidéc, rapporteur

1. Introduction

1. At the plenary sitting on 24 June 2009, during the discussion on “The situation of human rights in Europe: the need to eradicate impunity”, a member of the Parliamentary Assembly, Ms Ganira Pashayeva, referred to a book entitled “Revival of our souls”, allegedly written by Mr Zori Balayan, and cited a number of quotations concerning the alleged participation of the author in the massacre committed against Azerbaijanis.³

2. In a motion for a resolution,⁴ Mr Davit Harutyunyan and others reacted by stating that Mr Balayan had not written the book and that the quotations in question constituted an act of slander, which was aggravated by the accusation of murder allegedly committed by Mr Balayan. They asked the Committee on Rules of Procedure, Immunities and Institutional Affairs to propose amendments to the Rules of Procedure in order to provide safeguards against the dissemination of false and defamatory information and to protect the rights and reputation of injured persons, regardless of whether or not they were members of the Assembly. The motion was referred for report to the Committee on Rules of Procedure, Immunities and Institutional Affairs on 29 January 2010.

3. The present report examines the current framework set out in the Assembly’s Rules of Procedure relating to the protection of a person’s honour and reputation, considers whether the current wording of Rules 21 and 34 provides for appropriate reaction to attacks made on a person’s reputation and honour, and puts forward proposals to improve the preventive mechanisms and sanctions for such attacks.

2. Extent and value of the freedom of political speech in the Parliamentary Assembly

4. The Parliamentary Assembly was set up as a platform to enable the people of Europe to communicate through their legitimately elected representatives. The Assembly constitutes a forum where topical, often sensitive issues are discussed from different perspectives. It brings together not only different political forces but also national delegations of states which have been involved in armed conflicts. Freedom of expression is a constitutional principle in most European states and should not be undermined or limited, especially where exercised by elected representatives. Hence the importance of having effective rules which, on the one hand, enable the smooth conduct of proceedings in an elected assembly and, on the other, have a deterrent effect on those who misuse their parliamentary rights and privileges, such as their freedom of speech.

5. Political life in European countries is brimming with instances in which strong statements or allegations of criminal activities by high-ranking officials made in the course of a parliamentary debate have led to further in-depth investigations and, finally, to the dismantling of criminal activities or the identification of institutional shortcomings. In contrast, other statements, quickly spread by the media, have ruined reputations or political careers and have had a devastating effect on people’s private lives. This is why freedom of expression should be exercised in the public interest, but with due regard for the duties and responsibilities inherent in this freedom.

6. The European Court of Human Rights (hereafter “the Court”) has on several occasions confirmed the paramount role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 10 of the European Convention on Human Rights (ETS No. 5, hereafter “the Convention”) and the essential role of political parties in ensuring pluralism and the proper functioning of democracy. There can be no democracy without pluralism. It is for that reason that freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.⁵ In return, politicians are required to display a greater degree of tolerance and openness toward criticism.⁶

7. However, persons taking part in a public debate on a matter of general concern are also required not to overstep certain limits.

3. . See document AS (2009) CR 22, report of the Assembly’s 22nd sitting.

4. . See Assembly [Doc. 12059](#).

5. . *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24, p. 23, paragraph 49, and *Jersild v. Denmark*, judgment of 23 September 1994, Series A No. 298, p. 26, paragraph 37.

6. . *Lingens v. Austria*, judgment of 8 July 1986, Series A No. 103, p. 26, paragraph 42.

8. The right to freedom of expression is limited or indeed not applicable when it comes to hate speech,⁷ which is punishable in most European countries. Even though there is no universally recognised definition of hate speech, there are several criteria,⁸ such as public incitement to violence, hatred or discrimination, which can be used to identify it. Certain attacks on a group or a population could be considered xenophobic or racist even though they may not contain an explicit call for violence.⁹ As a general rule, most national legislation provides for the possibility of banning or dissolving a political party for incitement to hatred and violence towards a person or a group of persons because of their race, origins, etc.

9. The Court also pays great attention to the protection of reputation and honour which is considered to be a part of the right to respect for private life and is thus protected under Article 8 of the Convention.¹⁰ Therefore, defamation and insult could be considered as a ground for permissible restriction of the freedom of expression as protected by Article 10.

10. Nor is there any common definition of insult or defamation.¹¹ In general terms, defamation may be a statement in writing or in other forms, for example orally or by means of gestures. In order to be considered defamatory, an assertion must be public, harm a person's reputation¹² and be false.¹³ An insult, in contrast to defamation, does not imply an allegation of a specific fact. The requirement of truthfulness does not mean that any statement which is not based on facts should be penalised. It has been found to be contrary to Article 10 of the Convention to require proof of the truth of a value judgment. However, even where a statement amounts to a value judgment, there must be a sufficient factual basis to support it, failing which it will be considered excessive.

11. Nonetheless, these limitations have to be considered at a different level in the context of a parliamentary body, especially the Parliamentary Assembly of the Council of Europe which comprises delegations from 47 countries. Indeed, what may be regarded as permissible in a speech, the limits laid down and the sensitivity felt in respect of certain topics or expressions are deeply rooted in the political and historical context and vary from one country to another. Moreover, the substance of a statement cannot be examined without having regard to the context of a debate.

12. Consequently, when considering the possibility of introducing additional measures into the Rules of Procedure to strengthen the protection of a person's reputation and honour, the Committee on Rules of Procedure, Immunities and Institutional Affairs must ensure that no unnecessary restrictions are imposed on freedom of expression.

3. Internal Parliamentary Assembly framework to ensure standards of conduct

13. If a statement of a member of the Assembly needs to be questioned, it is fully justified that, given the member's special status and the possible political interests at stake, the President of the Assembly is the first to act. Measures which may be taken by the President to react immediately to words or expressions (or any other behaviour) which prejudice orderly debate are stipulated in Rule 21 on the maintenance of order. The Committee on Rules of Procedure, Immunities and Institutional Affairs must therefore consider whether the existing provisions regulating public order during Assembly sittings are sufficient or whether they need to be strengthened. Further, it should also consider the issue of the maintenance of order during committee meetings and the possibility of giving committee chairpersons the necessary tools to secure the smooth conduct of proceedings in committee.

3.1. Immediate measures

14. The Assembly's Rules of Procedure provide for several measures to ensure the smooth conduct of proceedings.

7. . See, for example, *Remer v. Germany*, decision of 6 September 1995.

8. . The report of the Committee of Experts for the Development of Human Rights (DH-DEV) on "hate speech" (Document GT-DH-DEV A(2006)008). See also Committee of Ministers Recommendation No. R 97 (20) on "hate speech".

9. . See *Féret v. Belgium*, Application No. 15615/07, in which the Court found no violation of Article 10 (freedom of expression) of the Convention in respect of the conviction of the applicant, chairperson of the political party "Front National", for publicly inciting discrimination or hatred, following complaints concerning leaflets distributed by that party during election campaigns.

10. . *Sanchez Cardenas v. Norway*, Application No. 12148/03, judgment of 4 October 2007, paragraph 38.

11. . An overview of the legislation of member states in respect of defamation can be found in the Assembly report "Towards decriminalisation of defamation" ([Doc. 11305](#)).

12. . Concurring opinion of Judge Loucadies, *Lindon v. France*.

13. Assembly [Resolution 1577 \(2007\)](#) "Towards decriminalisation of defamation".

15. Rule 21 on the maintenance of order provides that:

“21.1. The President shall call to order any member of the Assembly who causes a disturbance during proceedings.

21.2. If the offence is repeated, the President shall again call the member to order, and this shall be recorded in the report of the debates.

21.3. In the event of a further offence, the President shall direct the offender to resume his or her seat or may exclude him or her from the Chamber for the remainder of the sitting.

21.4. In serious cases the President may propose to the Assembly a motion of censure, which shall involve immediate exclusion from the Chamber for two to five sitting days. The member upon whom a motion of censure is proposed shall have the right to speak for a maximum period of two minutes before the Assembly decides.

21.5. The vote on a motion of censure shall be taken without debate.

21.6. Words or expressions which affront human dignity or which may prejudice orderly debate may not be used. The President may order such words to be struck from the report of debates. He or she may similarly strike from the report words spoken by a member not called by him or her. The report of the debates shall record any such decision.”

16. Moreover, Rule 34 on the right to speak authorises the President to call to order a speaker who departs from the subject. The President is entitled to forbid the speaker to speak during the rest of the debate if there is a third call to order regarding the same item.¹⁴

17. The following are examples of the use of such measures by the President.

- In 1968, in the course of the debate on the situation in Greece, a member referred to cases of ill-treatment by Greek police officials and cited their names. The President called the member to order, requesting him not to touch on anything which was *sub judice* inasmuch as those cases were under consideration by the European Commission of Human Rights.¹⁵
- In 1977, in the debate on the European Convention on the Suppression of Terrorism, a member protested against allegations made by the representative of the State of Israel who, by referring to the case of Abou Daoud, reproached France for failing to comply with international law and, in so doing, encouraging terrorism. A member of the French delegation stated that such accusations were contrary to the provision of the Rules of Procedure that forbade the use of words whose meaning constituted an affront to human dignity,¹⁶ and asked the President to strike those words from the record. The President was of the opinion that the accusations were directed against government policy and not against individuals and decided not to rule them out of order.¹⁷
- In 1986, in the debate on the use of human embryos and fetuses for diagnostic, therapeutic, scientific, industrial and commercial purposes, the President called to order a member who had made a number of comments regarding members' attitudes, on the grounds that he did not have the floor to criticise the attitude of other members of the Assembly.¹⁸
- In 2006, in the debate on the policy of return for failed asylum seekers in the Netherlands, a speaker making accusations against Azerbaijan was interrupted and instructed by the President to bring his speech into order.¹⁹
- In 2011, during the debate on the implementation of judgments of the European Court of Human Rights, the President called to order two members who criticised the rapporteur for his lack of impartiality having regard to his political commitment towards the Greek Cypriots.²⁰

14. . “34.4. If a speaker departs from the subject, the President shall call him or her to order. If a speaker is called to order twice on the same item of business, the President may, on the third occasion, forbid him or her to speak on that item.”

15. . Report of the 15th Sitting, 30 January 1968.

16. . Current Rule 21.6.

17. . Report of the 23rd Sitting, 26 January 1977.

18. . Report of the 18th Sitting, 24 September 1986.

19. . Report of the 7th Sitting, 26 January 2006.

20. . Report of the 6th Sitting, 26 January 2011 (Document AS (2011) CR 06).

18. There are comparable immediate measures in most of the parliaments of Council of Europe member states, in which the Speaker may ask a member to sit down, discontinue a speech, refuse to give the floor or temporarily exclude a member from the Chamber.

19. The rules of procedure of certain parliaments contain a specific reference or section dealing with similar measures to be applied in the event of abusive speeches, contempt, insult or serious disturbances. In some systems, a member who has been called to order is allowed to provide his or her explanations at the end of the plenary sitting.²¹

20. The rapporteur notes that, unlike the European Parliament,²² the Parliamentary Assembly, since it was established, has not been confronted with any significant or repetitive disruption of debates.

21. Moreover, contentious statements could also appear in writing in official Assembly documents. In a written declaration tabled during the January 2010 part-session,²³ the signatories criticised “ambiguous statements” made by the oldest member of the Assembly present “about Jews”. In a written declaration tabled at the April 2011 part-session,²⁴ the signatories criticised members of the Moldovan Parliament whose opposition to an anti-discrimination bill had been expressed “in language marked by homophobia and intolerance”. Some Assembly members reacted by tabling another written declaration,²⁵ pointing to the damage which the “groundless” comments had allegedly caused to the image of the Moldovan Parliament.

22. In accordance with Rule 52 of the Rules of Procedure, the President is competent to examine the admissibility of written declarations in the light of the conditions set out in Rule 52.2.²⁶ He or she may therefore rule that such declarations are inadmissible.

23. In its [Resolution 1443 \(2005\)](#), the Assembly noted that “there already exist a number of safeguards preventing the Parliamentary Assembly from becoming the forum of activities conflicting with the values of the Council of Europe”. Moreover, in 2006, the Assembly introduced a new paragraph to Rule 6 of the Rules of Procedure which henceforth imposes the duty of each member of the Parliamentary Assembly to subscribe to the principles and the values of the Council of Europe, as mentioned in the Statute ([Resolution 1503 \(2006\)](#)).²⁷

3.2. Measures related to the protection of the right to respect for private life

24. As mentioned above, the protection of reputation and honour is part of the right to respect for private life which is not explicitly mentioned in the Assembly’s Rules of Procedure. The Rules do, however, contain references to human dignity²⁸ and confidentiality.

25. The confidentiality requirement entails an obligation for members not to divulge details of discussions held in camera or not to make public documents which have been classified. While the debates of the Parliamentary Assembly – and all the Assembly’s related official documents – are public,²⁹ it should nonetheless be noted that, in general, Assembly committee meetings are not public, unless a committee decides otherwise.³⁰ Members of the Assembly who are not members of the committees in question may attend their meetings, with the exception of meetings of the Committee on the Honouring of Obligations and Commitments by Member States (Monitoring Committee) and of the Sub-Committee on the Election of Judges to the European Court of Human Rights. Those meetings are open only to the members of those

21. . Rule 64.2 of the Rules of Procedure of the Albanian Parliament; Rule 62 of the Rules of Procedure of the Belgian Chamber of Representatives.

22. . The European Parliament was faced with repeated incidents obliging it to adopt in 2006 a set of amendments to its Rules of Procedure to strengthen the standards of the conduct of its members and to make the penalties imposed more effective.

23. . Written Declaration No. 435, “Holocaust denial” ([Doc. 12138](#)).

24. . Written Declaration No. 474, “Homophobic speech by members of Moldova’s parliament and intimidation of LGBT human rights defenders” ([Doc. 12579](#)).

25. . Written Declaration No. 480, “Unjustified damage to the image of the Moldovan Parliament” ([Doc. 12593](#)).

26. . Rule 52.2 of the Rules of Procedure: “Written declarations shall not contain propaganda for commercial purposes or on behalf of persons or associations whose ideas or activities are incompatible with the Council of Europe’s principles. They shall also not contain racist, xenophobic or intolerant language or words and expressions whose meaning bears an affront to human dignity.”

27. . The protection of rights and fundamental freedoms, which lie at the heart of the Council of Europe’s objectives, includes amongst its founding principles respect for human dignity and the manifestation of tolerance.

28. . Rule 21.4.

29. . Rule 31.

30. . Rule 46.3.

committees.³¹ Moreover, the minutes of committee meetings are not made public, and committees may also decide to classify their documents confidential or restricted.³² The obligation of confidentiality, or indeed secrecy, applies equally to members of certain national parliaments against whom penalties may be imposed if they fail to observe this obligation.³³

26. A breach of the confidentiality requirement does not automatically affect a person's reputation or honour. For this to take place, the information revealed has to be harmful to some degree to a person's identity and integrity.³⁴

27. To date, the Assembly's Rules of Procedure do not regulate the use of personal information and do not provide for penalties if the breach of confidentiality is harmful to a person's reputation.

28. It should be noted that in most Council of Europe member states data protection legislation is not applicable to parliamentary proceedings.³⁵ Few countries make provision for anonymising data in the verbatim records.³⁶ Members of the Assembly could be instructed to avoid the excessive diffusion of private information which is not necessary or relevant for the purpose of the debate.³⁷ Some rules of procedure make the speaker of parliament responsible for ensuring that any statement published in the records of the sitting does not contain any inappropriate language. A similar approach could be adopted in the Assembly by preventing members from interfering with the right to respect for private life and by allowing the President of the Assembly to prevent attacks on a person's reputation and honour, for example by deleting inappropriate statements from the record of debates.

29. There are certain criteria, established by the European Court of Human Rights in its judgments relating to freedom of expression, which could help assess the existence and degree of an affront to a person's honour and reputation. These include, first and foremost, the relevance of what has been said to the context of the debate. Moreover, the status of the person against whom the remarks have been made is also an important factor. It has been accepted on several occasions that the limits of acceptable criticisms are wider as regards a politician acting as a public personality than as regards a private individual, since the former "inevitably and knowingly lays himself or herself open to close scrutiny of his or her every word and deed, in particular by a political adversary".³⁸ Account must then be taken of the terms employed, which, for example, should not exceed the limits of political criticism, thus proscribing the use of insulting remarks and gratuitous personal attacks.³⁹ In this connection, it should also be noted that even where the veracity of a value judgment of a person in the context of a debate cannot be demonstrated, it may be excessive if there is no factual basis to support it.⁴⁰ The above criteria could also be transposable to the President's assessment of the admissibility of a written declaration.

30. In the light of the above, the following amendment to Rule 21.6 could be considered:⁴¹

*"Words or expressions which affront human dignity, **or undermine the right to respect for private life**, or which may prejudice orderly debate shall not be used. The President may order such words to be struck from the report of debates. He or she may similarly strike from the report words spoken by a member not called by him or her. The report of the debates shall record any such decision."*

31. . Rule 46.6.

32. . The documents may be classified as restricted, confidential or secret, and would therefore be made public only one year, ten years or thirty years respectively after the date of issue. See "Additional provisions relating to documents", paragraph 5.

33. . Rule 38 of the Rules of Procedure of the Netherlands House of Representatives; Rule 67 of the Rules of Procedure of the Belgian Chamber of Representatives; rules 16 and 99 of the Rules of Procedure of the Spanish Congress of Deputies.

34. . A. v. Norway, Application No. 28070/06, paragraph 64.

35. . United Kingdom, Denmark, etc.

36. . Cyprus.

37. . For instance, in the report by Mr Dick Marty on inhuman treatment of people and illicit trafficking in human organs in Kosovo ([Doc. 12462](#)), an Albanian family, which owned a house allegedly used as a prison for Serb captives later killed for their organs during the war in Kosovo, was referred to in the report by a letter (the family K). (Any references to Kosovo in this document, 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.)

38. . Pakdemirli v. Turkey, Application No. 35839/97.

39. . Ibid., paragraph 46.

40. . Jerusalem v. Austria, Application No. 26958/95, paragraph 43.

41. . If the amendment proposed in paragraph 42 is adopted, the committee chairpersons will be given the same authority.

3.3. Disciplinary measures

31. Most of the rules of procedure of national parliaments provide for dissuasive or disciplinary measures which may result in the exclusion from the plenary sitting of a member whose conduct is particularly abusive or dishonourable. This is also the case in the Parliamentary Assembly.
32. In most countries, it is up to the speaker of parliament or a member who has been personally affected by the allegedly dishonourable statement to refer the request to a relevant body. A civil servant or a private person (who is not a member of parliament) usually has no right of action.
33. The speaker of parliament or a collegiate body (the Bureau/Presidium, an existing committee having a special mandate ⁴² or an ad hoc committee) ⁴³ could carry out an investigation into the alleged unlawful conduct of a member of parliament. The decisions taken following this procedure are often published in the official gazette.
34. Most parliaments provide for an adversarial procedure enabling the “perpetrator” to put forward his or her explanations. ⁴⁴ Some parliaments provide for an appeal body if the decision to apply a sanction to the member concerned is not taken by a collegiate body. ⁴⁵
35. The range of penalties which may be imposed on a member include reprimand, forfeiture of the daily subsistence allowance and suspension from participation in all or some of the activities of parliament for a given period.
36. The relevant body is required to investigate the breach of the provisions of the code of conduct or the rules of procedure (which often contain a specific chapter concerning the maintenance of discipline during the sitting). ⁴⁶
37. The procedure laid down in Rule 21.4 of the Assembly’s Rules of Procedure provides for the exclusion, by a collegiate decision, of a member of the Assembly for two to five days of sitting. The exclusion is proposed by the President and voted on the spot by the Assembly after the member concerned has been allowed two minutes to present his or her observations. It should be noted that this procedure has never been used in the Parliamentary Assembly. However, in the rapporteur’s view, this procedure serves a twofold purpose: it offers the possibility of sanctioning, if need be, any cases of unacceptable behaviour and, at the same time, it plays an important deterrent role.

3.4. Committee meetings

38. The rapporteur notes that there is a set of measures available to committees enabling the mitigation of any adverse impact on a person’s reputation or honour, should any statement be made or personal information revealed during a committee meeting. Committee meetings are held in private and access to these meetings can be limited to Assembly members only (see paragraph 26 above).
39. It should be noted, however, that the Rules of Procedure do not specifically regulate the maintenance of order during committee meetings. Nonetheless, since Rule 45.1 states that “except as otherwise provided, procedure in committee shall follow that in the Assembly”, Rule 21 on the maintenance of order in the Chamber may apply to committee meetings as well.
40. The Committee on Rules of Procedure considers it useful to have an explicit mention in the Rules that the same set of measures referred to in Rule 21 shall be made available to committee chairpersons.

42. . Seimas Commission for Ethics and Procedures (Lithuania).

43. . Rule 88, “Charges of dishonourable conduct – Committee of inquiry”, of the Rules of the Italian Senate provides that a member accused of dishonourable conduct in the course of a debate may request the setting up of a special committee of inquiry.

44. . Rule 21.4 of the Rules of Procedure of the Parliamentary Assembly; Rule 15.4 of the Rules of Procedure of the Assembly of the Western European Union.

45. . Under Rule 154 of the Rules of Procedure of the European Parliament, a member may challenge the decision by the President before the Bureau.

46. . Albania (Chapter IX of the Rules of Procedure), Ukraine (Chapter 9 of the Standing Order).

41. Accordingly, the committee proposes that Rule 45.6 relating to the procedure in committee be amended as follows:

“45.6. The chairperson shall open, suspend and close the meeting and shall direct the committee's debates. He or she may take part in the committee's debates. He or she does not participate in a vote except in the case of a tie. He or she shall ensure observance of the Rules and maintain order.”

3.5. Actions/sanctions by the political groups

42. The political groups or parties could also exercise influence over their members since they often have their own rules, including those regarding conduct, which might provide for penalties, including the exclusion of a member from the group.⁴⁷

4. Actions available to persons allegedly injured

43. The possibility of directly challenging the statements made in the course of a debate in plenary sittings or meetings of Assembly bodies is limited, especially when the challenge comes from a non-member of the Assembly. Accordingly, a proposal could be made to add a rule which would lay down the procedure enabling any person directly concerned by a statement to express disagreement with it.

4.1. Libel proceedings and parliamentary immunities

44. Given their specific privileges, it is difficult to take any action against parliamentarians using conventional remedies, insofar as a member of a parliament can be made accountable only by the parliament itself. However, any person who has allegedly been affected (member of parliament, individual⁴⁸ or legal persons) has the theoretical possibility of bringing an action against a parliamentarian for libel, defamation or any other offence against a person's honour and reputation, provided that the procedural conditions are complied with and the immunity of the parliamentarian concerned is lifted by the parliament. Most parliaments in Europe do not provide for the possibility for a member to waive immunity of his or her own free will, since immunity is considered as being granted not to an individual member but to the parliament as a body, in order to enable it to function without hindrance.⁴⁹

45. There are two categories of parliamentary immunity: first, “non-liability” in respect of judicial proceedings for opinions expressed and votes cast in the discharge of their parliamentary duty and, second, “inviolability”,⁵⁰ which protects members against arrest, detention or prosecution for offences unrelated to their parliamentary duties.⁵¹

46. On a number of occasions, the Assembly has addressed the issue of the immunity of its members,⁵² in particular in a 2003 comprehensive report of the Committee on Rules of Procedure, Immunities and Institutional Affairs,⁵³ which details the conditions for waiving the immunity of Parliamentary Assembly members and Substitutes.

47. The procedure for lifting immunity is generally the same. It is usually provided for in the parliaments' rules of procedure. It is set in motion by a proposal or a request by the competent public authority (in most cases the principal state prosecutor), the injured party or the parliamentarian concerned. The request is transmitted to the speaker of parliament, either directly or, in certain cases, through another authority (minister of justice, prime minister), then examined by a special or ad hoc parliamentary committee, which gives an opinion after hearing the member concerned. It is then for the full Chamber to decide, with or without a debate, in private or in public, whether or not to lift the immunity.

47. . See also Assembly [Resolution 1754 \(2010\)](#) on the fight against extremism: achievements, deficiencies and failures, in which the Assembly calls on political groups to “promote the setting-up of ethics committees within political parties and parliaments, with the right to sanction their members for racist, anti-Semitic, xenophobic or Islamophobic behaviour or discourse”.

48. . In March 2011, an Albanian family, referred to in the Assembly report on “Inhuman treatment of people and illicit trafficking in human organs in Kosovo”, sued the Assembly's rapporteur, Mr Dick Marty, for libel over a claim that their house was used as a prison for Serb captives later killed for their organs during the war in Kosovo.

49. . *Kart v. Turkey*, Application No. 8917/05.

50. . Does not exist in the Netherlands.

51. . Report by the Venice Commission (document CDL-INF(1996)007).

52. . [Recommendation 1602 \(2003\)](#).

53. . [Doc. 9718](#), report on “Immunities of members of the Parliamentary Assembly” (rapporteur: Mr Ionel Olteanu).

48. One of the controversial questions which arises with regard to immunities is the possible consequences of the exercise of freedom of expression. In several European countries, “non-liability” does not cover offences of defamation. The rapporteur notes, however, that the general trend is in defence of immunity if the impugned statements are made in the course of a parliamentary debate, even where they seriously affect a person’s life.⁵⁴

49. Rule 65 of the Assembly’s Rules of Procedure, which was introduced by [Resolution 1325 \(2003\)](#) on the immunities of members of the Parliamentary Assembly, authorises the Assembly to examine a request to waive immunity submitted by a competent authority in the course of proceedings instituted at national level, should it concern an action for libel or defamation. Accordingly, the rapporteur believes that, as far as the waiver of immunity is concerned, no additional provisions are necessary.

4.2. Right of reply

50. This right, which takes on various forms and is defined in numerous ways, is to be found in a number of Commonwealth parliaments⁵⁵ and can be exercised either by a member of parliament or any other person. It provides for the possibility of putting forward one’s own viewpoint in order to refute an allegation.⁵⁶ However, if the right of reply is not exercised immediately, it has limited effect and questionable dissuasive impact on members who abuse their freedom of speech.

51. This right is of great importance, especially when exercised by non-members of assemblies who often have very limited means of action. It allows individuals or legal persons who believe that they have been adversely affected by the statement of a parliamentarian to have an opportunity to formally respond and to have that response incorporated in the parliamentary record.⁵⁷

52. A party considering himself or herself injured shall submit a request in order to have his or her statement drafted in response to the impugned statement included in the minutes. A parliamentary committee examines the written statement to ensure that it contains no defamatory or insulting references or breach of privacy requirements. The committee then decides whether or not to publish the statement, without necessarily examining its merits or truthfulness.

53. Even though the effectiveness of this procedure is often undermined by the length of time required to take the decision to incorporate the statement into the minutes, it provides an alternative to a formal procedure. It allows any person to react to a statement without first instituting proceedings.

54. The rapporteur would recommend further consideration of the possibility for any individual or legal person to mark his or her disagreement with a statement made in the course of a debate which has affected him or her directly. A fair balance should be struck between, on the one hand, the possible negative consequences which the statement might have on the person’s reputation, and, on the other, the difficulties which may arise from the systematic examination of the request to incorporate in the record a statement in response. In the light of the above, the following procedure could be considered:

- Any member of the Assembly who has been named or referred to directly and considers that his or her reputation has been adversely affected by a statement made in the course of a debate by another member may ask the President of the Assembly to take the floor at the end of the debate for not more than two minutes. The President has the discretion to decide on how to respond to such a request.⁵⁸ He or she may ask the member who made the statement to provide an explanation.

54. . *A. v. the United Kingdom*, Application No. 35373/97. In this case the applicant and her family were subject to personal attacks and mockery as a result of statements made by a member of parliament in the context of a debate about municipal housing policy. The Court recognised that the MP’s allegations in his speech were extremely serious and clearly unnecessary having regard to the context of the debate. However, the Court did not find a violation of Article 6, paragraph 1, with respect to the impossibility for the applicant, given the absolute nature of parliamentary privilege, to bring an action before the Court to protect his reputation.

55. . For example, Article 5 of the Parliamentary Privilege Resolutions of the Australian Senate, adopted on 25 February 1988.

56. . Resolution (74) 26 of the Committee of Ministers of the Council of Europe on the right of reply – Position of the individual in relation to the press.

57. . www.parliament.vic.gov.au/council/publications-a-research/information-sheets/12-privilege.

58. . See Rule 34.7 of the Rules of Procedure, which stipulates that “A Representative who wishes to make a personal statement shall be heard for no more than two minutes at such time as the President may decide. No debate may arise on a personal statement”.

- Any person who has been named or referred to directly and considers that his or her reputation has been adversely affected by a statement made in the course of a debate by a member of the Assembly may submit a written request to the President of the Assembly for an appropriate response to be included in the record.
- The written request shall be reasoned, make reference to the impugned statement in the record and shall not contain any vexatious or offensive wording; it shall be submitted within three months of the date of the sitting during which the statement at issue was made.
- The President shall examine the request and decide:
 - a. either to include in the record a note in respect of the impugned statement along the lines of the following model: “By letter dated ..., [person’s name] disagrees with the assertion/statement appearing in this record, on the ground that ...”;
 - b. or not to include such a note.
- This provision shall not apply if the words spoken have been struck from the record in accordance with Rule 21.6.

5. Conclusions

55. The Committee on Rules of Procedure, Immunities and Institutional Affairs has been invited to consider whether the Assembly’s Rules of Procedure provide adequate effective measures regulating cases of attacks on a person’s honour and reputation. Under Rule 21, the President of the Assembly is the guarantor of the smooth conduct of plenary sittings.

56. However, there are limited possibilities for directly challenging statements made in the course of a debate in plenary sittings or the meetings of Assembly bodies which harm a person’s honour and reputation, especially when the challenge to a statement comes from a non-member of the Assembly.

57. At its meeting on 21 June 2011, the committee examined the preliminary draft resolution presented by the rapporteur. It agreed on the following recommendations to the Assembly:

- to amend Rule 21 of the Rules of Procedure so that its provisions also cover affronts to a person’s reputation and honour through violation of the right to respect for private life (see paragraph 30);
- to introduce a specific provision in the Rules of Procedure on the maintenance of order relating to the procedure in committee (see paragraph 41);
- to introduce a right to reply by establishing a new procedure enabling any person directly concerned by a statement to express disagreement with it (see paragraph 54).

58. The amendments proposed to the Rules of Procedure could enter into force at the opening of the Assembly’s 2012 Ordinary Session.