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The discipline of the members of the Parliamentary Assembly

Report[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Mr Christopher CHOPE, United Kingdom, European Democrat Group

Summary

The right to freedom of expression is the most important parliamentary privilege and an essential precondition for the independence of elected representatives. It also implies duties and responsibilities. However, in recent years, certain behaviour or modes of expression may have disrupted the normal running of the debates in the Assembly Chamber or committee meetings. The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that there may be a danger that incidents become more common or more serious in the future – with regard to verbal expression and gestures, use of visual materials, symbols and logos, or clothing.

On the basis of various practices found in national and supranational assemblies, the report seeks to provide indicators that may make it easier to interpret the rules on the discipline of Assembly members. The Committee on Rules of Procedure proposes to complete the existing complementary provisions – in particular by laying down a general requirement for members to conduct themselves in a courteous, polite and respectful manner – in order to enable the presidency of the Assembly and committees to take appropriate action to maintain order and ensure that meetings proceed smoothly, in a way that respects parliamentarians' freedom of speech. It is proposed to submit all disciplinary rules to the compliance procedure already set up in the code of conduct for Assembly members, which shall be supplemented with a list of sanctions.

1. Reference to committee: Bureau decision, Reference 3865 of 27 April 2012.

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A. Draft resolution[2]

1. The Parliamentary Assembly reaffirms its commitment to the right to freedom of expression which is the most important parliamentary privilege and an essential precondition for the independence of the elected representatives of the people. There are various ways to express one's position in the context of a political debate, including by displaying symbols or logos, or the wearing of a particular garment or costume, which are protected by the right to freedom of expression. Nonetheless, whoever exercises their freedom of expression also has "duties and responsibilities", the scope of which will depend on the situation and the means used.

2. It is therefore imperative to strike a fair balance between freedom of expression in the Assembly and the protection of a person's reputation and honour, as well to take into account the need to guarantee the smooth running of the Assembly's business. Assembly Resolution 1854 (2011) on ensuring protection against attacks on a person's honour and reputation has been an important step in this direction.

3. In recent years, the Assembly has had to deal with cases in which the behaviour of its members has been criticised by colleagues and non-governmental organisations (NGOs), thus undermining, directly or indirectly, the honour and reputation of members and the institution in general. Moreover, some unusual incidents have occurred in the Assembly Chamber or during committee meetings, suggesting that they may be repeated or become more common or more serious in the future. Breaches of existing ethical rules and poor conduct of parliamentarians in parliamentary fora, including the Assembly, undermine representative democracy as a whole and send the wrong message to citizens.

4. Therefore, recalling Rule 12 of the Assembly's Rules of Procedure and the code of conduct for members of the Assembly, the Assembly considers it necessary to supplement the existing provisions regarding members' conduct, in order to help the President of the Assembly and the committee chairpersons interpret the Rules of Procedure, take appropriate action to maintain order, and ensure that meetings proceed smoothly, in a way that respects members' freedom of expression.

5. The Assembly is entitled, under Article 28 of the Statute of the Council of Europe (ETS No. 1), to draft its rules and manage its internal affairs, including the right to discipline its members for misconduct and the power to impose penalties for any interference with its rules.

6. Accordingly, the Assembly decides to amend the complementary texts of its Rules of Procedure by:

6.1. supplementing the "Additional provisions relating to the Assembly debates" with the following new provisions on the "Conduct of members of the Parliamentary Assembly during Assembly debates (Rule 21 of the Rules of Procedure)":

6.1.1. "Pursuant to Rules 19.1 and 21 of the Rules of Procedure, the President of the Assembly maintains order and decorum and ensures that debates are conducted in a civil and orderly manner and in conformity with the rules and practices. Members of the Parliamentary Assembly shall behave in a courteous, polite and respectful manner towards each other and towards the President of the Assembly or other person presiding. They shall refrain from any action that may disrupt the proceedings. This provision shall apply mutatis mutandis to meetings of the Bureau and of committees. With regard to Assembly members' discipline and observance of the rules of conduct, paragraphs 17 to [20] of the code of conduct for members of the Parliamentary Assembly shall apply";

6.2. adding in the code of conduct for members of the Parliamentary Assembly, at the end of paragraph 19, the following sentence: "and/or inform the Speaker of the national parliament concerned. In cases of serious or repetitive breaches of the rules of conduct by a given member, and in accordance with the powers and responsibilities granted to the President of the Assembly in the Rules of Procedure, the President may take one or several of the following decisions: temporary deprivation of the right to speak and to be enrolled on the list of speakers, temporary deprivation of the right to sign an amendment, a motion or a written declaration. The President shall inform the Assembly accordingly."

2. Draft resolution adopted unanimously by the committee on 24 June 2013.

B. Explanatory memorandum by Mr Chope, rapporteur

1. Introduction

1. On 27 April 2012, further to a decision by the Bureau of the Assembly, the Committee on Rules of Procedure, Immunities and Institutional Affairs was asked to report on the rules and principles governing the discipline of Assembly members.

2. The decision followed an incident that occurred in the Assembly Chamber on 25 January 2012. During the debate on the honouring of obligations and commitments by Serbia, Ms Marietta de Pourbaix-Lundin, Vice-President of the Assembly, who was chairing the sitting, asked an Assembly member, Mr Tamás Gaudi Nagy (Hungary, NR), to remove the Hungarian flag from his table, in accordance with the rule on maintaining order during proceedings. The Chair's request having gone unheeded, the flag was removed by an usher, after Mr Gaudy Nagy had left the Chamber.[3] Later on, Mr Gaudy Nagy expressed his displeasure at the Chair's decision on his personal websites, urging "all Hungarian patriots" to make their views known directly to Ms de Pourbaix-Lundin and giving her e-mail address. The message prompted a flurry of e-mails from hundreds of Hungarian internet users, subjecting Ms de Pourbaix-Lundin to threats, insults and abuse.

3. On 8 March 2012, the Committee on Rules of Procedure, to which the matter had been referred by the Assembly's Bureau following a letter from Ms de Pourbaix-Lundin deploring the situation, held an exchange of views on the subject. The committee members strongly condemned Mr Gaudi Nagy's behaviour and suggested that the President of the Assembly, Mr Jean-Claude Mignon, write to the Speaker of the Hungarian Parliament to inform him of the Assembly's position on the incident. The letter, sent on 27 March 2012, expressed regret that a call to order, which was a purely procedural measure, should have been used for political purposes and caused a member of the Assembly to be inundated with hate messages.

4. The Committee on Rules of Procedure further noted that there was a danger that such lapses could become more common in the future in parliamentary fora and that more serious incidents might occur during Assembly proceedings, and be exploited for political purposes in order to hit the news.

5. While the above-mentioned incident occurred during a plenary sitting, committee meetings have not been without their "moments of tension". For example, during the discussions surrounding the adoption of the report of the Committee on Legal Affairs and Human Rights on the definition of political prisoners, on 26 June 2012, and then again on 3 October 2012, during the discussion on amendments to the draft resolution, some members spoke in an extremely heated manner.

6. Furthermore, in recent years, the Assembly has had to deal with cases where the behaviour of its members has been criticised by colleagues or non-governmental organisations (NGOs), thus undermining, directly or indirectly, the honour and reputation of the members in particular and the institution in general.[4]

7. In view of the above, it was felt there was a need to bring together in this report information about the various disciplinary practices to be found in national and supranational assemblies. Discipline is defined as, firstly, all the rules of conduct that a person is required to observe, and secondly the behaviour or attitude controlled through compliance with those rules. It is precisely this aspect that is covered by the present report, a logical sequel to the report on the conduct of members of the Parliamentary Assembly,[5] which sets out an express requirement for members to abide by the Rules of Procedure and decisions of the President relating to conduct and discipline.

8. Quite apart from what might be anecdotal cases, there is the question of what sort of behaviour it is appropriate to expect from parliamentarians, members of an interparliamentary co-operation organisation, who, although they stand for common values, also come from different political cultures and different traditions. What kind of attitudes, acts and/or comments might be considered by the President of the

3. On the same day, Ms de Pourbaix-Lundin received a letter signed by 11 members of the Hungarian parliamentary delegation, including its chairperson, deploring the incident and dissociating themselves from Mr Gaudi Nagy's behaviour.

4. See, for example, the report by the NGO European Stability Initiative, "Caviar diplomacy – How Azerbaijan silenced the Council of Europe", casting doubt on the integrity of certain Assembly members, or the letter dated 12 October 2012 from Mr Elkhan Suleymanov, a member of the Azerbaijani parliamentary delegation, to the President of the Assembly, concerning the conduct of the voting on Resolution 1900 (2012) on the definition of political prisoner.

5. Doc. 13000, report by the Committee on Rules of Procedure, Immunities and Institutional Affairs, and Resolution 1903 (2012).

Parliamentary Assembly or a Vice-President, during a sitting, or a committee chairperson, during a meeting, as patently failing to conform to "standards" of behaviour which, while not enshrined in the rules, are nevertheless commonly accepted?

9. The report does not seek to impose set patterns of behaviour on members but rather to provide, through examples, indicators that may make it easier to interpret the rules. This should then help the presidency of the Assembly and committees to take appropriate action to maintain order and ensure that meetings proceed smoothly, in a way that respects parliamentarians' freedom of speech and action.

10. The report looks at incidents that have occurred during meetings of various assemblies and at how these situations were addressed. It also examines parliaments' rules of procedure and the position taken by the European Court of Human Rights ("the Court") on certain relevant issues. The areas examined cover the dress code and the various methods employed to express a political view during debates, including the use of symbols and logos.

2. Current rules

11. The Assembly's Rules of Procedure were recently supplemented by two resolutions widening and elaborating on the disciplinary provisions. Accordingly, Resolution 1854 (2011) on ensuring protection against attacks on a person's honour and reputation amended the provisions of Rule 21 of the Assembly's Rules of Procedure in such a way as to also cover attacks on a person's honour and reputation through the right to respect for private life,[6] and added a specific provision on maintenance of order to the rules on procedure in committee. It also introduced a new procedure that allows any person directly affected by a statement to express their disagreement with that statement through a right of reply.

12. Resolution 1903 (2012) "Code of conduct of members of the Parliamentary Assembly: good practice or a core duty?" provides a framework of reference, in the form of a code of conduct for Assembly members with regard to conflicts of interest, offers of gifts or hospitality, and so on. It also gives the Assembly a mechanism for enforcing disciplinary standards based on an investigation and sanction procedure. Although this is primarily a matter for the President of the Assembly, he or she may consult the Committee on Rules of Procedure, which is well placed, given its terms of reference, composition and experience, to conduct investigations and make recommendations.

13. Lastly, as regards in particular access to, and movement and security within Council of Europe premises, responsibility for the smooth running of the part-sessions lies with the Secretary General of the Assembly (and the Director General of Administration of the Council of Europe) who has a number of powers relating to the prevention of any disturbances that might interfere with the smooth conduct of the proceedings.[7]

3. Expressing a political opinion

14. Freedom of expression for all citizens and hence for their legitimately appointed representatives forms part of a long-standing European tradition enshrined in Article 10 of the European Convention on Human Rights (ETS No. 5). The corollary of this is the absolute immunity granted to parliamentarians against any prosecution for opinions expressed in the exercise of their functions.[8]

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6. Article 21 – Maintenance of order
"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 undermine the right to respect for private life, 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."

7. For example, this authority allows him or her, during part-sessions, to prohibit the distribution of non-official documents or printed material, to control the use of meeting rooms and to deny access to the Palais de l'Europe to any individual if he or she has good reason to do so.

15. Generally accepted behaviour in a parliamentary context when it comes to expressing political ideas and opinions is deeply rooted in a cultural, historical and social context, and this accounts, for example, for the different ways in which parliamentarians express their disapproval or support for an idea in their respective parliaments.

16. It goes without saying that it is hardly possible to examine or anticipate all the circumstances that the President of the Assembly or the chairs of committees might face. Therefore, they must apply the rule of reason, which is that the privilege of freedom of expression must be used responsibly by those who have been given a public platform or otherwise be restricted in accordance with the Rules of Procedure.

3.1. Making oral statements

17. Verbal messages are still the ultimate tool for parliamentarians, who will adjust their words according to the debate or the audience they are addressing. To achieve the best effect on their audience, people tend to make use of the accentuation, rhythm or tone of their message. It is not rare in the course of a debate for people to make virulent comments or refer to shocking examples. Consequently, the question is whether, in view of the total freedom of expression that is granted to parliamentarians, everything that they say can be considered to be acceptable.

18. The Assembly recently adopted Resolution 1854 (2011) on ensuring protection against attacks on a person's honour and reputation, which enhances the protection afforded by the Rules of Procedure against the dissemination of false and defamatory information by striking the right balance between the right to freedom of expression and the right for a person's honour and reputation to be protected. The new wording of Rule 21.6 now prohibits words which "undermine the right to respect for private life". Furthermore, if a member of the Assembly considers that his or her reputation has been adversely affected by a statement made in the course of a debate, he or she may ask the President of the Assembly to make a statement at the end of the debate. More generally, anyone wishing to dispute such statements may ask the President to see to it that an appropriate response is included in the record.[9]

19. The rapporteur would like more particularly to draw attention to paragraph 29 of Ms Marie-Louise Bemelmans-Videc's report,[10] setting out the criteria established by the European Court of Human Rights, which may enable the President to assess the existence and degree of an affront: "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'. 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. 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."[11]

20. The rapporteur would also like to make some additional comments. The chair should take account of the context in which words are said. Discussions in committee meetings are often rapid and spontaneous and do not allow every word to be weighed properly, unlike statements during plenary sessions, which are often prepared in advance.[12] In addition to this, the impact of comments made in a committee meeting is clearly different, as such meetings are not open to the public – or may even be held in camera – whereas plenary sessions are broadcast live. Account should also be taken of the recurring or continuous way in which certain members make comments which could be considered to be offensive.[13]

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8. It should be noted that the extent of this immunity varies from one State to another and covers scenarios ranging from comments made during debates in parliament to opinions linked to a person's political office regardless of the place in which they are expressed or the audience.
9. Complementary texts, p. 103.
10. Doc. 12703, report of the Committee on Rules of Procedure, Immunities and Institutional Affairs.
11. In a similar vein, the French Court of Cassation does not consider Article 10 of the Convention to protect words which merely show "a personal animosity, and do not reflect an idea, an opinion or an item of information liable to add to a public discussion or debate", Court of Cassation, 1st Civil Division, 28 March 2008, No. 05-18.598.
12. In the case of *Gavrilovoci v. Moldova*, Application No. 25464/05, the European Court of Human Rights conceded that the applicant, who had been punished for using the word "fascist" during a statement before a regional council, was in a desperate state because his family had been refused vital aid (reimbursement of the costs of a regular journey by his son and his wife to a clinic to receive haemodialysis treatment) despite providing all the administrative documents which confirmed his right to this reimbursement.

21. However, the above resolution has not foreseen any specific disciplinary procedure concerning defamatory statements. In January 2013, the Bureau of the Assembly considered the issue of statements that may be made by a member during a meeting of the Bureau (and by extension during a committee meeting) which call into question the honour and reputation of a member of the Assembly.[14] It also instructed the Committee on Rules of Procedure to examine the question of setting up a special committee responsible for order-related matters, including complaints about defamatory statements made by Assembly members. The committee has already had a first exchange of views on this topic. The rapporteur's proposals below (Chapter 7) encompass the outcome of the first discussion.

3.2. Physical confrontation

22. The rapporteur considers it necessary to highlight a phenomenon which, although not new,[15] has been becoming more pronounced in recent years, namely the physical intimidation and assault of parliamentarians, not by people from outside the parliament in the form of hostile demonstrations against their positions or ideas, but by their own colleagues inside the debating chamber. Cases of intimidation, such as grabbing a political adversary's jacket or tie or pouring a glass of water over them, sometimes descend into violent quarrels with serious consequences if one of the parliamentarians is subject to a full physical assault. There has been much media coverage of the worst cases of confrontation in parliaments.[16]

23. To date, the Parliamentary Assembly has been spared such physical violence. However, conduct of this kind in some of the parliaments of the member States discredits the system of representative democracy as a whole and sends the wrong message to society and to young people in particular. Physical confrontation does not make any constructive contribution to debates and should not be allowed to supplant the confrontation of ideas. One of the distinctive features of parliamentary rules of procedure is that they ritualise political confrontation within a framework that everyone accepts.[17]

3.3. "Show, don't tell"

24. Scientists believe that 80% of information is transmitted to the human brain through the eyes and therefore it is important to use visual materials. A short slogan or a spontaneous gesture are a guaranteed and rapid means of attracting the public's attention and increasing the impact of messages. Here are a few examples:

– on 4 July 2012, during the vote on the draft Anti-Counterfeiting Trade Agreement (ACTA) in the European Parliament, parliamentarians who opposed this agreement held up posters carrying the message "Hello democracy. Goodbye ACTA" on a yellow and black background;

– on 22 May 2012, during the debate on the situation of the former Ukrainian Prime Minister, Ms Yulia Tymoshenko, some parliamentarians unfurled a large banner carrying a photo of Ms Tymoshenko and the words "Freedom for Yulia";

– the MEP Nigel Farage, the leader of the UK Independence Party and co-chair of the Europe of Freedom and Democracy Group in the European Parliament, often displays a small British flag in plenary sessions. During a debate on migration policy held on 10 May 2011 when talking about national prerogatives on the issue of migration, he held up this flag in support of his words ("this flag will go on long after your star-spangled banner has disappeared");

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13. For example, the MEP Jean-Marie Le Pen, who called Daniel Cohn-Bendit a "paedophile" in September 2011, or the MEP Godfrey Bloom, who called Martin Schulz a fascist in 2010. The MEP Nigel Farage was fined €3 000 for comments he made in 2010 about Mr Herman Van Rompuy ("[he has] the charisma of a damp rag and the appearance of a low-grade bank clerk").

14. See Doc. 13094 Addendum, Appendix 3 on a protection mechanism against attacks, in the Bureau and in committees, on members' honour and reputation. At the first sitting of 2013 of the Assembly, Ms Fiamma Nirenstein challenged the still unratified credentials of Mr Gaudi Nagy, a member of the Hungarian delegation, belonging to the Jobbik party, by arguing that he had asked in his parliament for a list of the Jews who pose a national security threat and said that there was a Holocaust industry that had helped the Jews dominate the world. Mr Gaudi Nagy stated that he was assigned statements which had not been said by him.

15. There was fighting in the Swiss Federal Council in 1930.

16. Particularly various incidents in the Ukrainian Parliament (such as those during the sittings of 19 March 2013, 24 and 26 May 2012 and 18 May 2010) and in the Italian Parliament (sitting of 27 October 2011).

17. In some parliaments such as the House of Commons in the United Kingdom or the French National Assembly, manifestations of support for the government and the discontent of the opposition follow a carefully orchestrated ritual. In the French National Assembly, the opposition leaves the chamber during question time to express its disapproval of certain statements being made.

– on 27 April 2010, during the vote in the Ukrainian Parliament on the ratification of the agreements on the maintenance of the Russian fleet in the Crimea, the opposition representatives covered all their seats in a Ukrainian flag, thus conveying the message that the agreements would compromise the sovereignty of Ukraine;

– on the day of a debate on battery hen farming in the British House of Commons, an MP brought in a cage to illustrate the cruelty of this type of farming.[18]

25. More commonly, it is a frequent occurrence in debating chambers for parliamentarians to respond to others' statements by booing, applauding or laughing.[19]

26. As far as the Parliamentary Assembly is concerned, the following rare examples should be mentioned:

– in 1992 and 1995, the Turkish delegation left the Assembly Chamber during a debate on the human rights situation in Turkey[20] and during a debate during which it was proposed to suspend Turkey's membership of the Council of Europe;

– in 2004, some members of the French delegation left the Assembly Chamber to signal their disapproval of the fact that Mr Jean-Claude Trichet, President of the European Central Bank and senior French civil servant, had begun his speech in English.[21]

27. Visitors who attend plenary sessions do not have the same degree of freedom of expression. Those who are authorised to enter the galleries are often asked to sit quietly, as expressions of approval or disapproval are prohibited.[22] The same rule applies, for example, to wearing T-shirts carrying political messages.[23]

4. Use of symbols

28. A symbol reflects an idea, doctrine or ideology and accordingly conveys a message in itself. The public use of symbols consequently comes under the protection of Article 10 of the European Convention on Human Rights, which guarantees freedom of expression. It must be ensured that the form taken by this expression is not likely to disrupt the functioning of the Assembly or that a symbol is not being abused.

4.1. Symbols of the State

29. Flags, anthems and coats of arms are national symbols which are often regarded as attributes of sovereignty. Because it is flown on public buildings and during official ceremonies and public events of all kinds, the flag is the most visible of these symbols of a country. Its use by individuals on private occasions is governed by the specific rules laid down by the State concerned.[24] It may be forbidden to use the national flag as a background or part of a logo. It should be noted that sensitivities regarding use of the flag are specific to each State and depend on historical connotations.[25] The great significance attached to flags, which often symbolise the values adhered to by a country, has led many States to criminalise contempt for their national flag.[26]

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18. Members are authorised to use visual materials in the House of Commons.
19. According to the minutes of the sittings of the Swiss National Council, the members laughed 317 times during the 46th legislature (1999-2003).
20. 10th sitting, 30 June 1992.
21. 17th sitting, 21 June 2004.
22. Rule 22.3 of the Rules of Procedure of the Parliamentary Assembly; Rule 145 of the Rules of Procedure of the European Parliament.
23. On 18 March 2010, students who had come from the University of Palermo to attend the debate of the European Parliament in Brussels on the Mafia and transnational organised crime were required to remove their T-shirts printed with the words "No Mafia" at the entrance as this was considered to be a political message.
24. For example, in Poland, until 2004 private individuals were authorised to fly the flag only on public holidays and, even today, use of the flag incorporating the coat of arms is officially confined to certain specific cases. In Russia, the possibility for individuals and legal entities to use the flag was regulated only with the 2008 amendment of the federal constitutional law of 2000 on the "National Flag of the Russian Federation".
25. It is of interest to note that, for decades, the German flag was rarely used by the population in reaction to the widespread use made of flags by the Nazi regime. During the German reunification celebrations held in Berlin in October 1990 the few people who marched bearing flags were either skinheads or neo-Nazis.
26. See, for example, Article 433-5-1 of France's Criminal Code; Article 329 of the Criminal Code of the Russian Federation; Article 137.1 of Poland's Criminal Code; Article 269/A of Hungary's Criminal Code; Article 236 of Romania's Criminal Code; Article 173 of Serbia's Criminal Code.

30. Although many members of the Parliamentary Assembly wear insignia of their national identity in a visible manner, notably in the form of their parliament's lapel pin, the Assembly's practice has always been to prohibit the display of other distinctive signs of national identity (conversely, in the European Parliament some members have adopted the habit of placing their country's flag on the desk in front of them).

4.2. The Assembly's logo

31. The Assembly has no formally approved written rules on the use of its logo by members or former members. In practice, use of the logo by members (in letterheads or on their personal websites,[27] for instance) is tolerated, since it helps promote the Assembly's visibility. It must be ensured that no harm will be done to the Assembly's reputation as a result of this use.[28]

4.3. Symbols linked to a cause or an ideology

32. In the member States, although the use of symbols in the halls or chambers where plenary sittings are held is generally confined to symbols of the State (flag or coat of arms) or of the national parliament in question, in some parliaments, as a matter of practice, it is permissible, for example, to display the logos or flags of parties or political groupings when members of that party or grouping are present.[29] In countries where religion played an important historical role in forging the national identity, crucifixes[30] or murals on religious themes[31] can still be found in parliament buildings.

33. The Assembly has no specific rule in this matter, but the customary norm is that use of symbols should be restricted. It can reasonably be assumed that it would be harmful for symbols associated with a group or ideology to be displayed systematically within an Assembly that represents the whole of Europe's citizens.

34. The rapporteur nonetheless considers that, in the light of the political context in Europe, namely the emergence and rise in some countries of parties representing the two extremes of the political spectrum, it is necessary to examine in more detail the use of certain symbols.

35. In a number of member States it is an offence to incite hatred or discrimination, which often includes the use and dissemination of symbols.[32]

36. In Europe, specific rules governing the use of the symbols of two regimes, Nazism and Communism, have for historical reasons been adopted at national level.[33] A typical feature of the legislation banning or restricting their use is that it often concerns the symbols of both these totalitarian regimes. In 2005, some members of the European Parliament initiated a proposal for a total ban on the use of Nazi symbols in the member States of the European Union. This initiative was supplemented with a proposal to outlaw the symbols of Communism. However, these proposals encountered opposition from certain delegations and senior European Union officials, who considered that this type of prohibition was a matter for national law.

37. A number of former Soviet republics and many East European countries have adopted legislation prohibiting the use of Nazi and Communist symbols. This was the case in Hungary in 1989, Latvia in 1991, Estonia in 2007, Lithuania in 2008 and Poland in 2009. Very recently, the Constitutional Court of the Republic of Moldova has declared anti-constitutional the decision taken by the parliament in July 2012 to ban the use of Communist symbols. In several other countries, the use of totalitarian or unconstitutional symbols or relating propaganda is prohibited, without specifying whether the regulation extends to Communist symbols and ideology or not.[34]

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27. Thought should be given to requiring that websites include a disclaimer notice to absolve the Assembly of liability for their content (see, for example, the practice followed by the British House of Commons).
28. Article 5.3 of the Code of Conduct of members of the Parliamentary Assembly (Resolution 1903 (2012)).
29. This applied to the Duma of the Russian Federation until April 2012, when the practice was discontinued on the ground that the flags concealed the members' faces. However, some Duma members claim that this practice facilitated the identification and visibility of members and groupings during television broadcasts of sittings.
30. As in the Romanian Parliament or the Sejm of Poland.
31. This is the case in the Casa de la Vall where the General Council of Andorra had its seat until 2011.
32. Article 261bis of the Swiss Criminal Code concerns the use and dissemination of symbols where they represent “ideologies that have as their object the systematic denigration or defamation of the members of a race, ethnic group or religion” or where they constitute “propaganda that publicly denigrates or discriminates against another person … in a manner that violates human dignity, whether verbally, in writing or pictorially, by using gestures, through acts of aggression or by other means”.
33. For example, the use of Nazi symbols is an offence under Article 86 of the German Criminal Code.

38. The right to use symbols is protected under Article 10 of the European Convention on Human Rights, provided their use comes within the scope of that article. For instance, the Court considers that acts which could destroy rights and freedoms protected by the Convention fall outside the protection of this article,[35] in particular so as to prevent "totalitarian groups from exploiting in their own interests the principles enunciated in the Convention".[36] Considerable attention has always been paid to the context in which a symbol is used.[37] However, the mere fact that a symbol is used in a provocative manner does not rule out protection under Article 10 of the Convention,[38] even if it may cause a feeling of unease with regard to the victims of the regime it symbolises. Understandable though they may be, such feelings alone cannot, however, set the limits of freedom of expression.[39]

39. While, as a political body and European debating forum, the Assembly must guarantee its members the broadest and fullest possible freedom of expression, that freedom can solely be exercised in accordance with the values and principles that found the Council of Europe and with its general aim of achieving greater unity between European countries "for the purpose of safeguarding and realising the ideals and principles which are their common heritage".

5. Dress code

5.1. General remarks

40. Some parliaments have an explicit dress code. In Andorra, for example, the traditional costume introduced several centuries ago to ensure a uniform appearance – a robe made of local fabric and a three-cornered hat – is still worn today by the country's elected representatives at solemn sittings of the General Council. Under Rule 56 of the Turkish Grand National Assembly's rules of procedure, men are required to wear a tie and women a skirt suit.

41. However, many European parliamentary bodies,[40] including our Assembly, have no rules laying down detailed dress code requirements, whether at sittings or, generally, on parliamentary premises.

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34. Albania, the Czech Republic, Germany, Italy, the Slovak Republic. See also document CDL-AD(2013)004, *amicus curiae* brief for the Constitutional Court of Moldova on the compatibility with European standards of Law No. 192 of 12 July 2012 on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies of the Republic of Moldova, adopted by the European Commission for Democracy through Law (Venice Commission) at its 94th Plenary Session (Venice, 8-9 March 2013).

35. "The general purpose of Article 17 is to prevent totalitarian groups from exploiting in their own interests the principles enunciated in the Convention. To achieve that purpose, it is not necessary to take away every one of the rights and freedoms guaranteed from persons found to be engaged in activities aimed at the destruction of any of those rights and freedoms. Article 17 covers essentially those rights which, if invoked, will facilitate the attempt to derive therefrom a right to engage personally in activities aimed at the destruction of any of the rights and freedoms set forth in the Convention." (*Glimmerveen and Hagenbeek v. the Netherlands*, Applications Nos. 8348/78 and 8406/78, decision of the European Commission of Human Rights of 11 October 1979, Decisions and Reports 18, p. 187, and *Garaudy v. France* (dec.), Application No. 65831/01). The Court's position has been confirmed in the recent judgment *Kasymakhunov and Saybatalov v. Russia* of 14 March 2013 (Applications Nos. 26261/05 and 26377/06), in which it states that the activities of Hizb ut-Tahrir, declared a terrorist organisation by a Russian court, "are not limited to promoting religious worship and observance in private life of the requirements of Islam. They extend outside the sphere of individual conscience and concern the organisation and functioning of society as a whole. Hizb ut-Tahrir clearly seeks to impose on everyone its religious symbols and conception of a society founded on religious precepts" (paragraph 112).

36. In its Opinion on the Federal Law on Combating Extremist Activity in the Russian Federation, the Venice Commission defines extremist activities as, *inter alia,* those activities aimed at encouraging racial, ethnic, religious or social hatred accompanied by violence or calls for violence or propaganda and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming undistinguishable.

37. For example, the swastika is dangerous if it is used by adherents of the Nazi ideology but is free from danger if used in an educational or informational context or as a Hindu or Buddhist symbol.

38. See paragraph 45 of the *Fáber v. Hungary* judgment, Application No. 40721/08. In the case under consideration, the applicant had displayed the vertically striped flag, known as the Árpád flag, in close vicinity to a demonstration organised by the Socialist Party of Hungary on armistice day near the spot where a number of Jews had been exterminated in 1944-45. The flag in question was widely used at the time by the extreme right party, and it was similar to the flag of the Arrow Cross Party, the openly pro-Nazi party in power in Hungary in 1944-45. The police, which had received instructions not to tolerate the flag in question in the vicinity of the socialist party demonstration, had in vain asked the applicant to leave the location.

39. See the *Vajnai v. Hungary* judgment of 8 October 2008, Application No. 33629/06, which concerned the applicant's conviction for wearing the five-pointed red star at a lawfully organised demonstration. The Court considered that there must be a direct link between wearing of the star and dissemination of totalitarian ideas or restoration of the regime in question.

42. The lack of any specific requirements does not mean this area is a regulatory vacuum. It is assumed that the mode of dress adopted by parliamentarians should be in keeping with the nature of their representative duties,[41] or meet certain informal criteria, and should therefore be "official, moderately conservative and presentable"[42] or proper and neat.[43]

43. It may also be observed that some customary practices have been laid down in writing[44] or are the subject of regular reminders by the speaker or president of the parliament.[45] Rules and customs mostly apply to plenary sittings. The dress code for parliamentarians attending committee meetings is more flexible.

44. While the dress code for male parliamentarians is generally more or less well defined, the code for women is still an open debate.[46] Some assemblies which have no dress code for women recommend "appropriate"[47] or "business" attire.[48] In 2008, the Inter-Parliamentary Union conducted a survey of women and men in parliaments.[49] Some women parliamentarians reported practices still existing in their parliaments, such as not being allowed to take their handbags into the chamber or being prevented from wearing trousers.[50] Several parliaments also have dress code requirements applying to members of the secretariat and visitors.[51]

45. In conclusion, "proper" or "suitable" attire is generally required, bearing in mind that this concept may vary according to the degree of solemnity attached to the parliamentarian's status in each country.

5.2. Clothing as an element of freedom of expression

46. The wearing of a particular garment or costume may sometimes reflect – or deliberately express – support for a political movement, a philosophy or current of thought, or a religion, and thus convey a political message. For example, representatives of nationalist parties may attend sittings wearing items forming part of the traditional costume.[52] In some parliaments, representatives of national or ethnic minorities wear traditional dress on national holidays or at the opening of a session.[53] Lastly, in some cases, regardless of any political connotations, parliamentarians may adopt a highly distinctive mode of dress, which, over time, becomes their "trademark".[54]

47. Clothing can therefore be part of a parliamentarian's political identity; consequently, when used in a particular context (debate on a controversial issue, speech by a distinguished guest, etc.) with the deliberate aim of proselytising or provoking, it may cause offence and trigger reactions, first and foremost among the members themselves. It may also be used by elected representatives or political leaders to try and "break the mould" of social conformism by challenging a traditional dress code deemed unduly restrictive or conservative.[55]

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40. In Belgium, Denmark and Hungary, for example.
41. Bulgaria.
42. Estonia.
43. Article 14 of the Code of Ethics of the Latvian Saeima requires members to be "properly attired and groomed" in the buildings of the Saeima.
44. In 1981, the Bureau of the French National Assembly confirmed a customary practice whereby male parliamentarians were required to wear a jacket and tie in the chamber. The Minister of Culture of the time was refused admission to the chamber because he was wearing a Mao collar suit with no tie. The wearing of jeans, sportswear, hats and headdresses is prohibited. In the United Kingdom, members of the House of Commons, where it is also customary for male MPs to wear a jacket and tie, are banned from wearing military decorations or insignia.
45. Italy, jacket and tie preferable.
46. In March 2012, the Indonesian parliament proposed banning female MPs and female staff from wearing "provocative" clothing, including mini-skirts.
47. US House of Representatives.
48. This suggestion was made by the Deputy Speaker of the United Kingdom's House of Commons, Ms Dawn Primarolo, following a remark made by a male MP about female colleagues wearing denim and knee-length boots.
49. www.ipu.org/PDF/publications/equality08-e.pdf, p. 74.
50. In July 2011, the Turkish Grand National Assembly initiated an amendment to Rule 56 of the rules of procedure to allow female MPs and the Assembly's female staff to wear a trouser suit. The motion was placed on the agenda after a female MP, Şafak Pavey, who has a prosthetic leg, had attended her first sitting following the elections of 12 June 2011. The amendment gave rise to a more general debate on relaxation of the dress code for all MPs (in particular, lifting of the ban on wearing a veil), on the grounds that a person's choice of attire was an embodiment of freedom of expression.
51. Spanish Congress of Deputies, British House of Commons, French National Assembly, Romanian Parliament.
52. In Ukraine, for example, representatives of the nationalist party "Svoboda" (Freedom) wear, in addition to the official suit, a traditional Ukrainian embroidered shirt.
53. For example, the Parliament of the Republic of South Africa.
54. For example, French MP Patrick Roy, famous for his wit and repartee during debates in the National Assembly, was nicknamed the "MP in the red jacket".

5.3. Religious attire and symbols

48. In view of the scale of the controversy over the wearing of religious symbols in public,[56] including, therefore, in parliaments, I feel that this question should be studied in greater detail.[57]

49. The wearing of religious attire is first of all a matter of freedom of religion and personal conviction. Freedom of religion generally implies the freedom to manifest one's religion in public, which restricts the possibility of imposing rules. Furthermore, religious attire may form part of a historical and cultural tradition and be an identity marker. Viewed in a political context, the wearing by parliamentarians of religious (and national) signs and symbols is intended to enable the population to identify more closely with its representatives.

50. Questions relating to religious expression are nothing new. However, the dynamics of change and the realisation that present-day European societies are multi-ethnic, multicultural and multiconfessional societies, give it a completely new practical dimension.[58] Within the Council of Europe, sensibilities with regard to the wearing of religious symbols in public differ from one country to another.[59] This question continues to arouse controversy in several member States.

51. Some States whose constitutional system is based on the principles of secularism and neutrality have had to address the issue of the use of different religious signs in public areas. The most widespread cases have involved schools, and in particular the wearing of the Islamic veil, whether by pupils or by teachers,[60] or the presence of crucifixes in classrooms in State schools.[61] Faced with new social realities, national authorities are constantly seeking to balance freedom of religion with the various imperatives that are "necessary in a democratic society", an exercise in which the European Court of Human Rights allows them a wide margin of appreciation.[62]

52. Although there are a large number of items through which an individual may express religious belief (turban, hijab, kirpan, skullcap, etc.), the question which fuels debate and controversy in Europe is still that of the wearing of the veil or Islamic headscarf[63] by women and girls, owing in particular to the growth of the Muslim population.

53. It is important to point out that the Parliamentary Assembly as such, in its internal functioning, seems to have been spared controversy. This is probably due to the very essence of the Organisation,[64] its active commitment to "living together" and the promotion of intercultural and inter-faith dialogue, as well as, more

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55. In 2012, the French Minister for Housing, Ms Cécile Duflot, wore jeans to her first Cabinet meeting and, a few weeks later, was jeered in the National Assembly for wearing a brightly coloured spring dress.

56. In 2010, Denmark passed legislation banning judges from wearing religious items in the courtroom. Belgium, in 2010, and France and the city of Barcelona, in 2011, banned the wearing of face-covering veils in public areas. A controversy arose in 2009 over the wearing of the veil by a female councillor at sittings of the Brussels regional parliament.

57. Reference should also be made to the report by the Committee on Culture, Science and Education in 2010 on "Islam, Islamism and Islamophobia in Europe" (Doc. 12266), Resolution 1743 (2010) and Recommendation 1927 (2010), and to the report by the Committee on Equality and Non-discrimination in 2012 on "Multiple discrimination against Muslim women in Europe: for equal opportunities" (Doc. 12956) and Resolution 1887 (2012).

58. The European Court of Human Rights has already ruled on questions relating to the wearing of the turban or veil in connection with security measures; see *Phull v. France* (dec.), Application No. 35753/03 (security checks at airports), *El Morsli v. France* (dec.), Application No. 15585/06 (checks at the entrance to a consulate).

59. For example, the United Kingdom has a flexible policy, which enables schools to accept the wearing by pupils of moderate religious dress. In Canada, police officers and soldiers are allowed to wear the veil (see "Freedom of Religion and Religious Symbols in the Public Sphere", Library of the Parliament of Canada). In France, the wearing of signs or clothing which conspicuously manifest pupils' religious affiliations has been banned in public educational institutions since 2004.

60. The principle of secularism, or rather confessional neutrality, is relied on by States for the successful defence of the ban on pupils or teachers wearing the veil at school. See the European Court of Human Rights judgment in *Dogru v. France* of 4 December 2008 (Application No. 27058/05) and the decision in *Dahlab v. Switzerland* (dec.) (Application No. 42393/98). This question remains largely an area where, in the absence of any consensus at European level, States possess a wide margin of appreciation.

61. *Lautsi and others v. Italy*, Application No. 30814/06, judgment of 18 March 2011 [Grand Chamber].

62. Ibid, paragraph 76, see also *Eweida and Others v. United Kingdom*, judgment of 15 January 2013.

63. The word "veil" is a generic term covering different items of clothing (chador, niqab, burqa, hijab, etc.) worn as part of a traditional national costume or associated with a specific movement within Islam.

64. Of the Council of Europe member States, Turkey, Azerbaijan, Albania and Bosnia and Herzegovina have predominantly Muslim populations. Islam is also the second most widespread religion after Christianity in countries such as Russia, with over 20 million Muslims (14% of the population), France with 5 million (9% of the population), Germany with 4 million and the United Kingdom with 1.6 million (3% of the population). This population consists of indigenous

recently, to the development of relations with the Muslim countries of the sub-Mediterranean region, reflected in the award of "partner for democracy" status to the Moroccan Parliament and the Palestinian National Council. Hence, some members of the partner for democracy delegations wear the veil during sittings.[65]

54. However, the Parliamentary Assembly, like all other Council of Europe bodies, attaches great importance to the protection of women's rights and cannot dismiss the arguments of supporters of secularism who stress that the Islamic veil is also symbolic of an increasingly influential political Islam.[66] Furthermore, the Islamic headscarf constitutes a "powerful external symbol" and might therefore have a "proselytising effect … imposed on women by a precept which … is hard to square with the principle of gender equality".[67]

55. All this explains the controversy arising from the wearing of religious signs, which, as well as expressing religious belief, may also be associated with a symbol used by a line of political thought to promote its values.

5.4. Practical application of the above remarks

56. I would conclude that the dress code in the Assembly should be restricted to proper or suitable attire, as is already generally required in the parliaments of all the member States. The Assembly should remain a forum for dialogue built around the promotion of democratic values and human rights. Such an approach would serve to prevent situations where a regulatory vacuum might be used to transgress rules by which members are nevertheless bound under the rules of procedure of their national parliaments.

57. In any event, the dress of members and guests of the Assembly and its committees must be consistent with respect for the security rules which apply to everyone, must not transgress the values which it is the Council's mission to uphold, and must not hinder normal communication.[68]

6. Improving the general mechanism for disciplinary matters concerning Assembly members

6.1. Disciplinary power of the Assembly

58. The Assembly has a permanent schedule of gatherings and is entitled, under Article 28 of the Statute of the Council of Europe (ETS No. 1), to draft its own rules and manage its internal affairs including, as in the case of almost all national parliaments, the right to discipline its own members for misconduct and the power to impose penalties for interfering with its rules. Assembly members enjoy privileges and immunities similar to those that almost all of them enjoy at national level.

59. The Assembly members are invited to respect these rules when they participate in plenary sittings, work in Assembly committees, make fact-finding visits or participate in the work of various internal Council of Europe or external international bodies. Though the rules of conduct in plenary sittings and committee meetings have long been sufficient to allow a smooth functioning of the Assembly,[69] there has been a growing demand from parliamentarians in recent years to have a better framework for conduct expected of them, applicable not only to sittings and committee meetings.[70] This call coincides with the first reports released on results of the 4th GRECO (Group of States against Corruption) evaluation round which recommend that such a framework be elaborated. A unique document covering all possible requirements,

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Muslims (such as those of the Caucasus region in Russia), immigrant workers and other groups who settled in the countries of western Europe in the 20th and 21st centuries, and their descendants. It is the latter countries in particular which have been confronted with problems related to the integration of Muslims in the public sphere, including the wearing of the Islamic headscarf or veil.

65. Likewise, in October 2010, Ms Hayrünnisa Gül, patron of the "Education enables" campaign in Turkey, in delivering her statement to the Assembly (in the debate on "Guaranteeing the right to education of children with illnesses or disabilities"). A member of the Russian delegation in the early 2000s was also wearing a veil during Assembly sittings.

66. *Leyla Sahin v. Turkey*, Application No. 44774/98, judgment of 10 November 2005 [Grand Chamber].

67. *Dahlab v. Switzerland* and *Dogru v. France*, paragraph 64, op. cit.

68. In line with these criteria, the full-body veil would be hard to accept because it hinders normal communication, which presupposes being able to address a person whose face is not hidden, and is inconsistent with the security rules requiring visual recognition for admission to the premises. Similarly, by way of a hypothetical example, the kirpan, a dagger carried by orthodox Sikhs, would not be allowed inside the Palais de l'Europe for security reasons.

69. See Rule 21 of the Rule of Procedure on maintenance of order. In addition, Resolution 1854 (2011) strengthened the provision related to the protection of an individual's honour and reputation by explicitly referring to the ban to undermine the right to respect of private life to the list of expressions contained in Article 21 that shall not be used during the debate. Moreover, it introduces a right for those individuals who believe that his or her reputation or honour has been harmed by statements made in an Assembly debate. However, no sanction for infringement has been foreseen to date.

70. Especially related to questions of conflict of interest

instead of being spread over different documents, supported by a compliance mechanism, would be a better guideline for parliamentarians and a suitable basis for the exercise of public scrutiny. The code of conduct of the Assembly members was therefore adopted in 2012[71] together with a separate chapter on the enforcement mechanism[72] which was conceived with regard to the liability members may also face according to their respective national regulations and laws. This mechanism grants a certain amount of discretion to the President of the Assembly with regard to both the initiation of the investigation into the breach of conduct and the sanctions to be imposed.

6.2. Observance mechanisms existing in national parliaments

60. When the code of conduct of Assembly members was being drafted, the Rules Committee had already studied the models existing in national parliaments of member States.

6.2.1. Independent authority

61. An example of such an independent authority is the Parliamentary Commissioner for Standards of the House of Commons of the United Kingdom. The Commissioner is appointed by a resolution of the House of Commons for a fixed term of five years. If a complaint for breach of conduct is brought against a member, the Commissioner has discretionary competence to order a further inquiry, after having examined the evidence provided. Should a breach be established following the inquiry, the Commissioner can resolve the matter him/herself. However, in serious cases or at a member's request, a report by the Commissioner is referred to the Committee on Standards and Privileges of the House of Commons, which draws its own conclusions. If a sanction has to be proposed, it is a matter for the House of Commons. Other parliaments of common law countries have a similar system.

62. Since 2011, the Bureau of the French National Assembly has appointed, for the duration of the National Assembly parliamentary term, a deontologist who supervises the compliance with the code of ethics. In the event that a breach is established, the deontologist tries to resolve the matter him/herself. If a member disagrees with the deontologist's findings, the matter is referred, via the President, to the Bureau, which decides on the matter.

63. It follows from the above that even though an independent authority has a necessary competence to resolve a matter, in the case of a serious violation the right to sanction its own member remains with the parliamentary body.

6.2.2. Specialised parliamentary committees

64. National parliaments often set up specialised standing committees responsible for matters related to the observance of the rules of ethics and conduct, including the analysis of financial declarations. These committees are mainly composed of parliamentarians,[73] with a few exceptions.[74] In some countries, the composition of such committees is based on political membership[75] and takes into consideration a proportional representation of all parliamentary groups.[76] In Italy, an ad hoc committee can also be appointed

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71. Resolution 1903 (2012).
72. "Observance of the code of conduct
    – – If a member is believed to have acted in breach of the code of conduct, the President of the Assembly may seek clarification and further information from the member concerned, the chairperson of the member's national delegation, the chairperson of the member's political group or the chairperson of the member's committee.
    – – If necessary, the President of the Assembly may seize the Committee on Rules of Procedure, Immunities and Institutional Affairs to examine the circumstances of the alleged breach and make a recommendation as to a possible decision to be taken by the President.
    – – Should the President of the Assembly decide that the member failed to comply with the code of conduct, he or she may prepare a reasoned statement to be read out in the Assembly if need be.
    – – Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of the Assembly."
73. The Deputies' Ethics Committee of the Polish Sejm, the Commission on Ethics and Procedure of the Lithuanian Seimas, the Standing Orders Committee of the Danish Folketing, the Committee on the Rules of Procedure and the Organisation of the parliamentary work of the Russian Federal Council.
74. The Croatian Parliament's Commission for the Resolution of Conflicts of Interest is composed of seven members appointed by the parliament, four of whom are parliamentarians and three are eminent public figures. The Dutch House of Representatives' advisory committee of persons of confidence is composed of representatives of civil society organisations and parliamentary political parties.
75. The Advisory Committee of the European Parliament

by the President, at the offended member's request, to investigate an alleged attack on the member's honour and reputation resulting from a statement made during a debate.[77] The procedure may be launched following a motion by a member,[78] a group of members[79] or a parliamentary group[80] or upon the President's[81] or the Assembly's[82] request.

6.2.2.1. Investigative functions

65. Some committees have a mandate to carry out a quasi-judicial investigation into any alleged breach of disciplinary rules[83] with, in some cases, general principles of a fair trial being respected, such as the possibility for the member concerned to be represented by an attorney at a hearing and a right to appeal.[84]

6.2.2.2. Advisory functions

66. Some of these committees have a merely consultative function and provide, at the President's request, opinions related to matters concerning discipline and parliamentary ethics.[85]

6.2.3. The leading role of the president

67. In the German Bundestag, the president is a first instance which looks into the matter if a breach of the code of conduct has been reported. He or she carries out an investigation with the help of a secretariat department and may ask for further information from the member concerned or the chairperson of the member's political group. If the breach once established is minor, the president may address an admonishment to the member. Otherwise, the findings are sent to the Presidium, which decides on the matter. In the Norwegian Parliament, in the absence of any specialised committee, the president and the Presidium also deal with cases related to members' misconduct. In the European Parliament, the president decides on a matter and a sanction to be imposed on a given member[86] with the possibility to ask, if a breach of the Code of Conduct is at stake, the Advisory Committee for a recommendation.

6.2.4. Sanctions

68. Sanctions are often imposed by a specialised committee with the approval of the president or the plenary. They include a warning, a reprimand, an admonishment, an apology, a temporary exclusion from sittings and financial sanctions. The outcomes of the findings are often made public.[87]

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76. The Commission on Ethics and Procedure of the Lithuanian Seimas
77. The ad hoc committee releases its findings within the time-limit laid down by the president; these findings are announced by the president without being debated in the plenary. This procedure exists in both the Senate and the House of Representatives.
78. The Immunity Committee of the Senate of the Czech Republic.
79. The Presidium of the Polish Senate.
80. The Mandate, Ethics and Submissions Committee of the Latvian Saeima.
81. The European Parliament.
82. Portugal.
83. Both Chambers of the Parliament of the Czech Republic.
84. The Polish Senate.
85. Le comité de déontologie du Sénat français, the advisory committee of confidence persons of the Dutch House of Representatives.
86. Rule 153 of the Rules of Procedure on penalties:
    ("1. In exceptionally serious cases of disorder or disruption of Parliament in violation of the principles laid down in Rule 9, the President, after hearing the Member concerned, shall adopt a reasoned decision laying down the appropriate penalty, which he shall notify to the Member concerned and to the presiding officers of the bodies, committees and delegations on which the Member serves, before announcing it to plenary.
    2. When assessing the conduct observed, account shall be taken of its exceptional, recurrent or permanent nature and of its seriousness, on the basis of the guidelines annexed to these Rules of Procedure.
    3. The penalty may consist of one or more of the following measures:
    (a) a reprimand;
    (b) forfeiture of entitlement to the daily subsistence allowance for a period of between two and ten days;
    (c) without prejudice to the right to vote in plenary, and subject, in this instance, to strict compliance with the Members' standards of conduct, temporary suspension from participation in all or some of the activities of Parliament for a period of between two and ten consecutive days on which Parliament or any of its bodies, committees or delegations meet;
    (d) submission to the Conference of Presidents, in accordance with Rule 19, of a proposal for the Member's suspension or removal from one or more of the offices held by the Member in Parliament.")
87. The Polish Sejm, the Italian Senate.

6.3. General compliance mechanism for Assembly members

6.3.1. Procedure

69. It has been mentioned above that the procedure suggested by the code of conduct meets the spirit of the current Rules of Procedure, is consistent with existing policies and is flexible enough to take into consideration the liability members may also face according to their respective national regulations and laws. According to the Rules of Procedure, the President of the Assembly is generally responsible for the smooth running of Assembly business, and is the first instance to investigate a member's alleged misconduct by consulting, where necessary, the Committee on Rules of Procedure or political groups or national delegations in order to clarify the matter. Therefore, in the rapporteur's view, the existing regulatory framework provides necessary guarantees and enforcement mechanism allowing the Assembly to react promptly to a breach of its own rules.

70. However, the authority of the President to launch an inquiry could be kept by adding a possibility for him/her – or the Committee of the Rules of Procedure to which the matter may be referred by the President in accordance with paragraph 18 of the code of conduct – to seek, given the complexity of issues related to disciplinary matters, including defamation,[88] an expert assessment. After having studied practices existing in other parliaments, the rapporteur has come to the conclusion that independent advice dealing with disciplinary matters often represents additional guarantees of independence vis-à-vis parliamentarians themselves and also with respect to the general public.

6.3.2. Sanctions

71. It has to be noted that, contrary to many national parliaments and the European Parliament, the Parliamentary Assembly has never had a financial penalty among available sanctions.[89] "Naming and shaming" is the most effective sanction that the Assembly has used in practise to tackle the violation of its rules. That is why, during the elaboration of the code of conduct, the reading of the conclusion of the investigation during a plenary sitting by the President was chosen as the more effective sanction[90] and was explicitly mentioned in the code of conduct. The report on the code of conduct also referred to the possibility of intermediary sanctions such as a reprimand or an admonition, an apology or expulsion of the member concerned from the sittings by the way of a motion for censure or a letter to the speaker of the parliament concerned. In addition, members could also be temporarily deprived of their rights granted by the Rules of Procedure, such as the right to vote, to enrol on speakers lists or to sign a motion.

72. In the rapporteur's view, a flexible, common-sense approach should be kept, as outlined in the code of conduct for members of the Parliamentary Assembly, giving the President of the Assembly a margin of discretion.

7. Conclusions

73. In the light of the foregoing considerations and the observations made by committee members, the rapporteur would like to submit the following proposals.

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88. Several criteria need to be assessed when the statement concerned has been made in the context of a political debate. 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". Moreover, 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.

89. In case of non-attendance of sittings or in case of a disorder or disruption the forfeiture of entitlement to the daily subsistence allowances could be imposed on a member of the European Parliament (Article 153 of the Rules of Procedure and Article 31.1 of the implementing measures for the Statute for Members of the European Parliament). Moreover, the non-granting of European Union funding would be used to sanction the parties and foundation which do not observe the value of the European Union "namely respect of human dignity, freedom, democracy, equality, the rule of law and respect of human rights, including the rights of persons belonging to minorities" (Proposal on the statute and funding of European political parties and European political foundations).

90. This penalty could also be accompanied by a letter to the president of a given parliament informing her or him about the outcome of the investigation.

7.1. Additional provisions on members' conduct

74. It is proposed to add to the additional provisions relating to Assembly debates new provisions on the behaviour of Assembly members in plenary, laying down a general requirement for members to conduct themselves in a courteous, polite and respectful manner such as to enhance the dignity of the institution and its members, and refrain from any action that may disrupt the proceedings. Such a general provision ensures a comprehensive coverage of members' conduct including verbal expression and gesture, use of visual materials, symbols and logos, clothing; it strengthens the existing prohibition (Rule 21.6 of the Rules of Procedure) on the use of words affronting human dignity and undermining the right to respect for private life (namely defamation). These new complementary provisions shall apply to members' conduct in plenary sittings and also during committee and Bureau meetings.

7.2. Additional provisions on sanctioning members' conduct

75. With regard to members' discipline and observance of the rules of conduct, it is proposed to submit all disciplinary rules to the compliance procedure already set up in the code of conduct for members of the Parliamentary Assembly.

76. The sanction mechanism set out in the code of conduct should be completed in order to establish a list of sanctions left to the President's discretion in cases of serious or repetitive breaches of rules of conduct by a given member.