



## Resolution 2087 (2016)<sup>1</sup>

# Introduction of sanctions against parliamentarians

### Parliamentary Assembly

1. In recent decades, international action has become increasingly important in the work of national parliaments, with the growing number of interparliamentary co-operation organisations and international parliamentary forums, the development of bilateral and multilateral international parliamentary relations (friendship groups, specialised interparliamentary networks), study groups and fact-finding visits. Furthermore, there is an increasing demand for interparliamentary co-operation, in particular in connection with support for the democratic transition process in many States.
2. As an institution emblematic of interparliamentary co-operation in Europe, the Parliamentary Assembly refers to its [Resolution 1773 \(2010\)](#) on promoting parliamentary diplomacy, in which it welcomed the positive role played by such diplomacy in preventing conflicts, reducing tension between countries, facilitating dialogue and mediation.
3. The Assembly is seriously concerned about the current political context in Europe, where the illegal annexation of Crimea by the Russian Federation and its intervention resulting in a military conflict in eastern Ukraine, following the war between Russia and Georgia, and the occupation and illegal recognition of the independence of the Georgian territories of Abkhazia and South Ossetia by the Russian Federation, have generated a climate of mutual distrust and revived security concerns within Council of Europe member States and the European Union, against a background of a “war of sanctions”. The reciprocal direct sanctions and the resulting restrictions on travel by parliamentarians are particularly harmful to parliamentary diplomacy.
4. The Assembly reaffirms the principle of territorial integrity, sovereignty and inviolability of the internationally recognised borders of all member States. In this context, the Assembly has systematically condemned the violation of international law and the Statute of the Council of Europe (ETS No. 1) by the Russian Federation in respect of Georgia and Ukraine. It has, *inter alia*, deplored the actions of the individual members of the Russian Federation Duma and the Federation Council who have unanimously voted in favour of military aggression, occupation, recognition of independence and annexation of parts of Council of Europe member States, and it has imposed sanctions envisaged by the Statute of the Council of Europe.
5. The Assembly believes that the restrictive measures targeting parliamentarians are not compatible with the very nature of parliamentarianism, which requires relations to be maintained through dialogue. It is concerned that the spread of individual sanctions, involving the sharing of responsibility between States and individuals who support the State’s objectives, may result in an excessively moralistic trend in international law and the system of international liability, whereby, in the absence of any criminal liability, individual sanctions supplement the traditional sanctions targeting States.
6. Moreover, the Assembly notes the existence of national “blacklists” of parliamentarians to whom the States which have compiled these lists can refuse visas or entry. Criminal or administrative proceedings for having breached a State’s legislation on entry into its territory must fully comply with international law. The

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1. *Assembly debate* on 26 January 2016 (4th Sitting) (see [Doc. 13944](#), report of the Committee on Rules of Procedure, Immunities and Institutional Affairs, rapporteur: Mr Díaz Tejera). *Text adopted by the Assembly* on 26 January 2016 (4th Sitting).

See also [Recommendation 2083 \(2016\)](#).



Assembly underlines that, regardless of the legitimacy of the assertion by certain States of their sovereignty or the integrity of their territory in response to real or presumed threats, all restrictive measures are subject to compliance with international law, principles of good governance and the respect of law.

7. However, the Assembly stresses that the measures it can adopt against its delegations or individual members under its Rules of Procedure are not part of a sanctions regime regulated by international law. These measures should be seen as a mechanism to prevent serious violations of the basic principles established by the Statute of the Council of Europe and persistent failures to honour obligations and commitments by the Council of Europe's member States.

8. The Assembly considers that, although international law in principle grants States full sovereignty over their territory, entry bans imposed by member States on parliamentarians amount to interference in their exercise of the right to freedom of expression enshrined in the European Convention on Human Rights (ETS No. 5). With reference to [Resolution 1894 \(2012\)](#) on the inadmissibility of restrictions on freedom of movement as punishment for political positions, the Assembly reasserts that freedom of movement as a corollary of freedom of expression must not be subject to restrictions or used as punishment for peacefully expressing political opinions. Freedom of political expression enjoys enhanced protection and should not be restricted without compelling reasons.

9. The Assembly welcomes the fact that since the adoption of its [Resolution 1597 \(2008\)](#) on United Nations Security Council and European Union blacklists, the safeguards applicable to sanction procedures or restrictive measures both at United Nations and European Union level, in particular the procedures for challenging the measures, and the scope and intensity of judicial review of the measures, have been duly improved. In this connection, it welcomes the judicial supervision exercised by the Court of Justice of the European Union over decisions providing for restrictive measures against natural or legal persons adopted by the Council of the European Union and expects the Court of Justice to clarify the extent and scope of the safeguards concerning natural persons through its case law.

10. The Assembly considers that any sanction targeting individuals must meet the requirements of legal certainty and be accompanied by appropriate procedural guarantees. However, in the case of parliamentarians, even if judicial reviews of bans or restrictive measures imposed by third countries play a key part in protecting them against arbitrary decisions, they should be afforded additional safeguards in order to offset the harmful effects which travel restrictions may have on the performance of their duties. The Assembly calls on Council of Europe member States to provide foreign parliamentarians targeted by restrictive measures, such as being placed on entry or visa blacklists, with a transparent listing and appeals procedure.

11. In this context, the Assembly calls on member States which have adopted or may adopt restrictive measures to:

- 11.1. identify exhaustively the provisions governing the restrictive measures, travel ban lists or special rules on movement which could restrict foreign parliamentarians' freedom of movement;
- 11.2. make sure that there is a close link between a restrictive measure imposed on a foreign parliamentarian and its intended purpose. In particular, national security grounds must not be used to restrict the access of a parliamentarian who is peacefully expressing certain political positions;
- 11.3. notify foreign parliamentarians who are subject to bans or restrictive measures that such measures are in place and the reasons for them;
- 11.4. ensure that foreign parliamentarians are able, at short notice, to submit their observations to the body that has imposed or is threatening to impose a restriction;
- 11.5. suspend the execution of a ban or restrictive measure while it is being challenged.

12. The Assembly is seriously concerned about the restrictions or travel bans which certain Council of Europe member States have imposed on Assembly members in the performance of their duties, in particular in the case of election observation exercises or visits by rapporteurs duly appointed by it, whether in terms of refusals to issue visas or threats of arrest or prosecution under national legislation. The Assembly unreservedly condemns these restrictions, which are a flagrant violation of the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) and the protocol thereto (ETS No. 10) and a breach of the undertaking to co-operate with the Assembly.

13. Under the Statute of the Council of Europe and the General Agreement on Privileges and Immunities of the Council of Europe and the protocol thereto, to which they all are parties, Council of Europe member States have undertaken to recognise and guarantee the free movement and immunity of Assembly members and to

protect them against any legal proceedings or detention, thereby ruling out both entry or visa bans and prosecution for failure to comply with rules on entry or movement, for instance via legislation on occupied territories.

14. The Assembly emphasises that, in accordance with the principles of international law, no State may evade the obligations imposed on it by international law or the treaties which it has signed by relying on the provisions of its domestic legislation, of whatever kind, including its own constitution. Accordingly, no Council of Europe member State may derogate from the obligations it entered into under the General Agreement on Privileges and Immunities and the protocol thereto by relying on provisions of its domestic law to justify its failure to comply.

15. The Assembly therefore formally asks the member States to abide by their commitments to:

15.1. guarantee free movement of members of the Assembly. When a member State hosts a meeting, a visit or an official event organised by the Assembly, it must facilitate the participation of members of the Assembly and issue the visas required for their entry into its territory, unless otherwise provided by the principles of international law;

15.2. guarantee the immunity of members of the Assembly against any legal proceedings or measures for their arrest or detention, except in cases of *flagrante delicto*.

16. Reiterating firmly the position which it took in [Resolution 2078 \(2015\)](#) on the progress of the Assembly's monitoring procedure, [Resolution 2063 \(2015\)](#) on consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation and [Resolution 2034 \(2015\)](#) on the challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation, the Assembly condemns the violation by the Russian Federation of the General Agreement on Privileges and Immunities of the Council of Europe and calls on the authorities to release immediately Nadiia Savchenko, member of the Assembly.

17. The Assembly believes that it is now vital for national parliaments to introduce good governance in the area of their international activities if they wish to continue to operate legitimately through parliamentary diplomacy. It calls on the national parliaments of the member States to:

17.1. draw up guidelines on the conduct of bilateral or multilateral interparliamentary relations, setting out the aims, instruments and arrangements for interparliamentary co-operation, as well as the institutional and legal framework, the procedural or organisational aspects or general rules of conduct, the rules applicable to visits by parliamentarians to other countries and, where applicable, the specific rights of parliamentarians travelling on official business;

17.2. provide appropriate training for members of parliament and the relevant secretariat staff concerning the preparation and conduct of parliamentary visits to foreign countries and prepare updates on specific rules and regulations outlined by the national legislation of Council of Europe member States and parliamentary practice;

17.3. support initiatives aimed at promoting, at international level, the recognition of an international status for parliamentarians and any related rights and obligations, which is vital to the development of parliamentary diplomacy.

18. The Assembly also calls on the member States to:

18.1. sign and ratify the 1969 United Nations Convention on Special Missions;

18.2. study without delay the question of the rights and obligations of national parliamentarians from Council of Europe member States travelling on their territory in order to grant them adequate safeguards for carrying out their duties freely and effectively outside their own countries, including the freedom of movement and expression, and inviolability of their person;

18.3. in this context, study the possibility of granting national parliamentarians from Council of Europe member States travelling on their territory on behalf of their parliaments the same immunities as parliamentarians from their own countries.

19. Against this overall background of the internationalisation of national parliamentary activities and given the greater responsibility now borne by parliamentarians on account of their actions and decisions, with the possibility of their being held personally liable under international law, the lack of a specific status and protection for parliamentarians under international law means that parliamentarians' rights and privileges

outside their own countries are precarious. Account therefore needs to be taken of the specific nature of parliamentary work at international level and the protection afforded to those performing it needs to be strengthened, in particular in relation to third countries. The Assembly therefore calls on:

19.1. the Inter-Parliamentary Union to draft and promote a set of rules applicable to parliamentarians travelling abroad in the exercise of their duties so as to provide an international framework for interparliamentary co-operation;

19.2. the United Nations International Law Commission to promote, in its ongoing discussions, a comprehensive international legal framework so that parliamentarians targeted by restrictive measures are covered by a proper status in this connection, given the wide range of different safeguards afforded to individuals targeted by sanctions, which currently depend on the legal order of the international organisation or State which imposed them.