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## Recognition and implementation of the principle of accountability in the Parliamentary Assembly

### Report<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

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### Summary

The members of the Parliamentary Assembly are required to act in compliance with the duties and obligations by which they are bound, in particular ethical rules in force. The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that this requirement shall be more stringent in respect of the Presidency of the Parliamentary Assembly and other high elective offices. In order to ensure the democratic functioning of the Assembly, the holders of elective offices, i.e. the Presidency of the Parliamentary Assembly, the vice-presidencies of the Assembly, as well as the chairmanships and vice-chairmanships of committees, shall account for their actions to those who have elected them to those offices.

The committee wishes to reiterate the importance of the principle of accountability, which includes a duty of transparency and an obligation to account for one's acts, without which the Assembly cannot have any confidence in those it has elected to office.

In order to ensure that this principle is given full recognition, the committee invites the Assembly to complete its regulatory framework by creating a procedure to bring into play the institutional accountability of holders of elective offices within the Assembly and the possibility to dismiss them during their term of office.

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1. Reference to committee: Assembly decision of 28 April 2017, Reference 4289.



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## A. Draft resolution<sup>2</sup>

1. The members of the Parliamentary Assembly are required to act in the strictest compliance with the duties and obligations by which they are bound, as set out in Rule 6.2.b (statement that members subscribe to the aims and basic principles of the Council of Europe, Rule 13 (members' ethical conduct) and Rule 22 (maintenance of order) of the Rules of Procedure, and in the Code of Conduct for members of the Parliamentary Assembly. The Assembly believes that this requirement should be more stringent, firstly in respect of the President of the Parliamentary Assembly, but also in respect of such other high elective offices as the vice-presidencies of the Assembly, as well as the chairmanships and vice-chairmanships of committees, as defined by the Rules of Procedure.

2. Just as, in a representative democracy, the requirements of transparency, integrity, responsibility, primacy of the public interest, confidence and accountability constitute the foundation of the contract which binds an elective representative to citizens, the Assembly wishes to reiterate the importance of the principle of accountability which links those of its members who are elected to certain functions with those who have elected them. If this undertaking of accountability, which includes a duty of transparency and an obligation to account for one's acts, is not fulfilled, the Assembly cannot have any confidence in those it has elected to office. Representing an institution also means respecting it with integrity and honesty. Holding an elective office means acting with accountability from the first day to the last day of that office.

3. It is of the very essence of the democratic functioning of a parliament that the holders of elective offices, and first and foremost its President, and those given key positions of responsibility, such as rapporteurs, account for their actions to those who have elected them to those offices. Their election to the office in question can be assumed to reflect the trust placed in them but this trust must not be construed as granting them *carte blanche*. The Assembly is convinced that the existing regulatory framework which provides for numerous safeguards, the frequency of elections and the short duration of these elective offices is not sufficient to ensure that their holders comply with the obligation to account for their actions.

4. In consideration of the above, the Assembly decides to institute a procedure to bring into play the institutional accountability of holders of elective offices within the Assembly and to dismiss them during their term of office. Such a procedure shall apply solely to high elective offices, namely the President of the Parliamentary Assembly, the Vice-Presidents of the Assembly, and the chairpersons and vice-chairpersons of the committees. It is in no regard a criminal measure and shall entail no other consequences than those explicitly provided for in the Rules of Procedure.

5. Accordingly, the Assembly decides to amend its Rules of Procedure as follows:

5.1. in Chapter XI "Exceptional procedures", after Rule 53, insert the following new Rule:

*"Procedure for dismissing the President and Vice-Presidents of the Parliamentary Assembly"*

*1. The Assembly may terminate the functions of the President of the Parliamentary Assembly or a Vice-President of the Assembly on the ground that he or she no longer enjoys the confidence of the Assembly, be it that he or she no longer fulfils the conditions required for the exercise of that office or is guilty of serious misconduct by seriously or repeatedly violating the provisions of the Code of Conduct for members of the Parliamentary Assembly.*

*A motion for dismissal concerning the same person and based on the same grounds may be tabled only once in the course of an ordinary session of the Assembly.*

*2. A motion for dismissal shall be presented in both official languages and signed by at least one tenth of the component members (representatives and substitutes) of the Assembly belonging to at least three political groups and ten national delegations.*

*The motion for dismissal shall be published as an official document within 24 working hours, forwarded to the member concerned and referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs which shall give an opinion on its admissibility. The committee hears the member concerned; the absence of the duly invited member at the meeting is not a valid ground for postponing the committee's decision. The committee's opinion shall be approved within 24 hours at most following the reference, if it is decided in the course of a part-session of the Assembly, or otherwise at the meeting which immediately follows the reference. The motion for dismissal shall be put to the vote of the Assembly within 24 hours at most after*

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2. Draft resolution adopted unanimously by the committee on 2 June 2017.

*the approval of the committee's opinion if it is issued in the course of a part-session of the Assembly, or otherwise at the opening of the part-session which immediately follows the approval of the committee's opinion.*

*3. A motion for dismissal, presented in both official languages, may also be signed by at least one fifth of the component members (representatives and substitutes) of the Assembly belonging to a least three political groups and fifteen national delegations.*

*The motion for dismissal shall be published as an official document within 24 working hours and forwarded to the member concerned. It shall be put to the vote of the Assembly within 24 hours at most after its publication, if it is issued in the course of a part-session of the Assembly, or otherwise at the opening of the part-session which immediately follows its publication.*

*4. After the publication of the motion for dismissal and until the final decision on the motion is taken, the President or Vice-President ceases to chair the sittings of the Assembly.*

*5. The provisions of Rules 27.5 (alteration of the agenda), 33 (discussion and consideration of texts), 34 (amendments and sub-amendments) and 37 (procedural motions) shall not apply.*

*6. Only the first signatory of the motion, the chairperson of the Committee on Rules of Procedure, Immunities and Institutional Affairs or a representative appointed by the committee, the chairperson of each political group or a representative appointed by the group, and the member to whom the procedure relates may be heard in the debate.*

*7. The Assembly shall decide by using the electronic voting system, in accordance with the quorum conditions laid down in Rule 42.3 and by a two-thirds majority of the votes cast.*

*8. The voluntary resignation of the member concerned from his or her office shall terminate the procedure.*

*9. The President of the Parliamentary Assembly or the Vice-President of the Assembly is dismissed after the results of a positive vote have been announced.*

*10. A President of the Parliamentary Assembly who has been dismissed may not rely on the provisions of Rule 20.3. He or she shall not be eligible for re-election to the office of President or for election to the offices of Vice-President of the Assembly, or of chairperson or vice-chairperson of a committee. He or she shall not be granted the title of Honorary President of the Parliamentary Assembly. A President or Vice-President of the Assembly who has been dismissed from office may not be granted the title of honorary associate of the Parliamentary Assembly.”;*

5.2. in Chapter XI “Exceptional procedures”, following the preceding Rule, insert the following new Rule:

*“Procedure for dismissing chairpersons and vice-chairpersons of committees*

*1. A committee may terminate the office of its chairperson or a vice-chairperson at the request of one third of the full members of the committee belonging to at least three political groups and five national delegations on the ground that he or she no longer enjoys the confidence of the committee, be it that he or she no longer fulfils the conditions required for the exercise of that office or is guilty of serious misconduct by seriously or repeatedly violating the provisions of the Code of Conduct for members of the Parliamentary Assembly.*

*A motion for dismissal concerning the same person and based on the same grounds may be presented only once in the course of an ordinary session of the Assembly.*

*2. The motion for dismissal shall be sent to the members of the committee at least one week before the date of the meeting for which its signatories have requested it be placed on the agenda.*

*3. After the motion for dismissal has been released and until the final decision on the motion is taken, the chairperson or vice-chairperson ceases to chair the meetings of the committee.*

*4. The dismissal shall be pronounced by the committee under the quorum conditions laid down in Rule 47.3, and by a two-thirds majority of the votes cast. It shall have immediate effect. Rule 47.2 on secret ballot shall not apply.*

*5. The voluntary resignation of the chairperson or vice-chairperson concerned from his or her office shall terminate the procedure.*

6. A committee chairperson or vice-chairperson who has been dismissed shall not be eligible for election or re-election to the position of chairperson or vice-chairperson of a committee. He or she may not be granted the title of honorary associate of the Parliamentary Assembly.”;

- 5.3. amend Rule 15.5 as follows:

“The President shall remain in office until the opening of the next ordinary session. Should the office of President fall vacant, **or if the President is unable to discharge his/her duties, the most senior Vice-President** shall act as President until the election of a new President at the following part-session [footnote: if the most senior Vice-President is unable to assume the functions of the President, the task will be entrusted to the next most senior Vice-President]. The President so elected shall remain in office until the opening of the next ordinary session. The President may be re-elected once for a further term, consecutive or not. However, a President elected in the course of a session for an incomplete term may be re-elected for two further terms.”;

- 5.4. amend the first sentence of Rule 16.7 as follows:

“Except when the delegation to which a Vice-President belongs is renewed in the course of the session, **or in the event of dismissal pursuant to Rule [54]**, Vice-Presidents shall remain in office until the opening of the next ordinary session.”;

- 5.5. amend Rule 20.3 as follows:

“The immediate past President, as long as he or she remains a representative or substitute in the Assembly without interruption **and provided that he or she has not been dismissed from office pursuant to Rule [54]**, shall be an ex officio member of the Committee on Political Affairs and Democracy, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the Committee on Rules of Procedure, Immunities and Institutional Affairs. Rule 44.6 shall not apply to him or her.”;

and amend, accordingly, the footnotes to Rule 44.1;

- 5.6. in Rule 24.2.c, insert the following footnote:

“motions tabled by representatives or substitutes **[including motions tabled pursuant to Rule [54]]**”;

- 5.7. amend Rule 41.c as follows:

“the majorities required are: for the adoption of a draft recommendation or a draft opinion to the Committee of Ministers, for the adoption of urgent procedure, for an alteration to the agenda, for the setting up of a committee, the fixing of the date for the opening or resumption of ordinary sessions **and a decision to dismiss the holder of an elective office**, a majority of two-thirds of the votes cast;”

- 5.8. at the end of Rule 46.7, add the following sentence:

“A chairperson or vice-chairperson of a committee who has been dismissed from office pursuant to Rule [55] may not be a candidate for the office of chairperson or vice-chairperson of a committee or a sub-committee”.

- 5.9. amend Rule 47.3 as follows:

“A committee may deliberate and take decisions when one-third of its members are present; however, if so requested by one-sixth of its members before voting begins on a draft opinion, recommendation or resolution as a whole, or on the election **or dismissal** of the chairperson or vice-chairpersons, the vote may be taken only if a majority of committee members are present”.

6. This resolution shall take effect upon its adoption. Its provisions shall apply to the current offices of the President and Vice-Presidents of the Parliamentary Assembly and the chairpersons and vice-chairpersons of committees.

## B. Explanatory memorandum by Ms Liliane Maury Pasquier, rapporteur

### 1. Introduction

1. At its meeting on 27 April 2017, the Committee on Rules of Procedure, Immunities and Institutional Affairs unanimously adopted a [declaration](#) on the “Principle of confidence in members and their duty of accountability when exercising their elective offices in the Parliamentary Assembly”, which it forwarded to the Bureau of the Assembly, requesting that it refer this matter to it for report. The Bureau took note of the declaration at its meeting on 28 April and the same day, the Assembly instructed the committee to draft a report on recognition and implementation of the principle of accountability.

2. The visit to Syria on 20-21 March 2017 – together with and under the aegis of Russian parliamentarians – by the President of the Parliamentary Assembly, the chair of the ALDE group and the chair of the Committee on Legal Affairs and Human Rights – supposedly in their capacity as members of their national parliaments – in addition to provoking outraged reactions by several members, delegations and political groups, raised questions about the commitments by which Assembly members who exercising key elective offices are bound. A request for an urgent debate on introducing a procedure for dismissing members exercising such offices fell just short of the two-thirds majority required at the opening of the April 2017 part-session.

3. Under its Rules of Procedure, the Parliamentary Assembly does not have the power to “censure” or dismiss its President. It is clear that at both national and international level little thought has been given to the question of the political and institutional accountability of those holding “executive” offices in assemblies. The principle is that parliaments elect their President/Speaker – and their Vice-Presidents/Deputy Speakers – for the duration of the office laid down in the constitution, legislation or the parliament’s own rules of procedure. However, some parliaments in Europe do have provision for dismissing their President/Speaker during their term of office, clearly indicating that the Presidents/Speakers of parliament must be held accountable for their acts.

4. The aim of this report is therefore to clarify the concept of the accountability of the parliamentary executive and the procedures which could be introduced to ensure that the latter “accounts for its actions”. As there is little academic literature on the subject, this report will accordingly take a comparative look at the procedures for holding to account other executive offices, in particular heads of State and members of the government. It will make a number of proposals for introducing the principle of the accountability of members exercising high elective offices in the Assembly and a *sui generis* procedure for bringing this accountability into play.

### 2. Political accountability and criminal responsibility

5. First of all, it is essential to clarify, from a legal point of view, the concepts to be factored into the committee’s analysis. While several terms tend to be used interchangeably in common parlance (dismissal, removal from office, suspension, impeachment), they are not synonymous and relate to very distinct concepts and procedures. Some of these are political or administrative in nature (removal, dismissal,<sup>3</sup> recall<sup>4</sup>), others come under criminal law (impeachment).

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3. *Removal* or *dismissal* refers to the unilateral act taken by a person or body, revoking an earlier decision taken and withdrawing the powers assigned to another person or terminating his or her office or duties.

4. *Recall* (in French *rappel*, *référéndum révocatoire*, or *révocation populaire*) is a procedure enabling citizens to remove and replace a public official or elected representative before the end of his or her term of office – in this way expressing their political disapproval or loss of confidence in the person in question. It is in force in 19 of the States in the United States of America (in both the legislative and executive branches of States and in local authorities), in British Columbia (Canada) and in several South American and African countries. It is also to be found in 3 German *Länder*, six Swiss cantons (“block” recall, rather than individual removal from office), and in Belarus. In 11 of the 19 recall States in the United States the specific grounds for the move do not have to be cited. This procedure covers both the referendum on whether the elected representative or the public official should be removed from office and the simultaneous or separate election of the replacement to fill the vacant post.

In the United Kingdom, the Recall of MPs Act 2015 introduced a recall process. If a recall petition process is triggered and at least 10% of eligible electors sign the petition, the Member’s seat becomes vacant. The recall election process is triggered in three circumstances: if a Member is sentenced to a prison sentence of 12 months or less (MPs have to vacate their seats if they are sentenced to more than a year in prison); if a Member is suspended from the House of Commons

6. Nonetheless, the way these procedures are used in practice blurs this distinction: impeachment procedures are not without political considerations; and factors relating to criminal law may also be behind the initiation of dismissal procedures.

7. Accordingly, in introducing a procedure to dismiss the holders of elective offices, the Assembly could draw on recent developments relating to the accountability of executives, focusing on the concept of “institutional” or “constitutional accountability” in order to establish a means of protecting the dignity of the office.

### **2.1. Establishing the criminal responsibility of the head of State<sup>5</sup>**

8. In presidential or semi-presidential regimes, based on a strict separation of powers and a system of checks and balances, a President, exercising the office of head of State, is not politically accountable to parliament. Similarly, he or she cannot be held criminally responsible for acts carried out in the exercise of his or her functions, except in specific cases and in accordance with a particular procedure, generally provided for in the constitution. As such, he or she enjoys a particular status.

9. Impeachment refers to the procedure enabling a legislative body to hold the head of State, ministers and any high official criminally responsible on an individual basis and to remove them from office (in the US this includes the President, the Vice-President and Secretaries of State, and also federal judges) for having violated the law or the Constitution. The aim of this dismissal procedure is to enable judicial criminal proceedings to be brought against the person removed from office. In practice it does not necessarily reach that result. A distinction should be made between the impeachment procedure – which in the United States is approved by the House of Representatives by a simple majority – and the impeachment trial itself (which will rule on guilt or innocence; in the US, it takes place before the Senate and a guilty verdict requires a two-thirds majority),<sup>6</sup> although in common usage, the term covers the whole procedure as well as the removal from office in which it may result. Impeachment is intended to hold the President, holder of governmental office or high official criminally responsible, not politically accountable. It is not the same as a vote of no confidence.

10. The majority of European countries which have a republican regime have a procedure for holding the head of State criminally responsible (Albania, Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Republic of Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine).

11. The President of the Republic may be held criminally responsible for offences committed in the exercise of his or her presidential functions following the adoption by parliament of an indictment decision (Armenia, Austria, Germany, Greece, Italy, Portugal). Where there are two houses of parliament, the consent of both houses is required, except in Germany. Constitutions rarely give a precise and exhaustive definition of the acts for which the President may be held liable. They merely refer to concepts such as a violation of the Constitution or of the constitutional order (Austria, Bulgaria, Croatia, Georgia, Germany, Greece, Hungary, Republic of Moldova, Romania, Slovak Republic, Slovenia, “the former Yugoslav Republic of Macedonia”), treason or high treason (Armenia, Belarus, Bulgaria, Cyprus, Czech Republic, Finland, Greece, Italy,

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(following a report from the Committee on Standards) for at least 10 sitting days or 14 days; or if a Member is convicted of an offence under section 10 of the Parliamentary Standards Act 2009 (offence of providing false or misleading information for allowance claims).

5. Regarding the criminal responsibility of ministers, reference may be made to the report by the European Commission for Democracy through Law (Venice Commission) on the relationship between political and criminal ministerial responsibility, adopted on 8 and 9 March 2013 (CDL-AD(2013)001), and a summary of existing provisions (CDL-REF(2012)040 and CDL-REF(2012)041).

See also the Assembly report ([Doc. 13214](#)) and [Resolution 1950 \(2013\)](#) “Keeping political and criminal responsibility separate”.

6. Section 4 of Article II of the US Constitution provides that “The President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors”. All offences, with the exception of the most minor, may give rise to this procedure.

Article 85 of the Brazilian Constitution provides that “Those acts of the president of the republic which attempt on the federal constitution and especially on the following, are crimes of malversation: I – the existence of the Union; II – the free exercise of the legislative power, the Judicial power, the public prosecution and the constitutional powers of the units of the Federation; III – the exercise of political, individual and social rights; IV – the internal security of the country; V – probity in the administration; VI – the budgetary law; VII – compliance with the laws and with court decisions”. Article 58 provides that “if charges against the President of the Republic are accepted by two-thirds of the Chamber of Deputies, he shall be submitted to trial before the supreme federal court for common criminal offences or before the federal Senate for crimes of malversation”. A two-thirds majority in the Senate is required for removal of the President from office.

Romania, Russian Federation, Ukraine), a serious criminal offence (Armenia, Azerbaijan, Belarus, Russian Federation) or a crime (Ukraine), violation of the law (Germany, Hungary), a crime against humanity (Finland) or stated misbehaviour (Ireland).<sup>7</sup>

12. In virtually all countries, the initiative falls to members of parliaments: motions must be tabled by a minimum number of members of parliament, varying between one fifth (Hungary, Ireland, Portugal), a quarter (Bulgaria, Germany) and a third (Belarus, Greece, Russian Federation, Ukraine). Referral to the competent body is frequently decided upon by a qualified majority (two thirds – Republic of Moldova, Ukraine – or three quarters of the votes cast, but by a simple majority in Armenia). A resolution to remove the head of State from office is adopted by parliament by a three-quarters majority (Azerbaijan, Ukraine) or a two-thirds majority (Armenia, Belarus, Ireland, Republic of Moldova, Russian Federation).<sup>8</sup>

13. The constitutions may determine exactly the duration of the procedure for removing the head of State from office: two months (Azerbaijan) or three months (Russian Federation) following the indictment decision. If during this period the dismissal decision is not adopted, it is deemed to have been rejected.

14. In the majority of cases, the impeachment procedure has no direct impact on the electoral or other political rights of the dismissed head of State. In Austria, however, the Constitutional Court may order the temporary withdrawal of political rights if there are particularly aggravating circumstances. In Poland, the special court with jurisdiction in such matters may combine the removal from office with the temporary withdrawal of certain political rights (general disqualification from standing for election for a period of up to ten years, ban on occupying certain offices for the same period and withdrawal of decorations and honorary titles). In the Czech Republic and Slovak Republic a dismissed president loses for ever the right to be re-elected President of the Republic but may stand in any other election. In the Russian Federation, he or she may not stand in the presidential election announced following his or her removal from office.

15. When examining the *Paksas v. Lithuania* case,<sup>9</sup> the European Court of Human Rights analysed the procedure relating to the impeachment of the President of the Republic. In this case, the applicant had been removed from his office as President by the national parliament because of gross violations of the Constitution. Wishing to run for the presidency of the Republic at the election called a few months later, he handed over to the Central Electoral Board (CEB) the requisite number of signatures to validate his registration. A few days before the signatures were handed over, the national parliament amended the law on presidential elections, introducing a provision preventing anyone who had been removed from office under an impeachment procedure from being elected President if fewer than five years had elapsed since that person's dismissal. As a result of this amendment to the law, the CEB refused to register his candidature for the forthcoming election. The law in question was examined by the Constitutional Court which concluded that restricting ineligibility to five years was contrary to the Constitution insofar as the applicant had lost once and for all the right to be elected President of the Republic at the time the impeachment had been pronounced. The applicant's appeals against the CEB's decision had been rejected on the basis of the Constitutional Court's decision.

16. In its examination of the case, the European Court of Human Rights concluded that the impeachment procedure did not concern the determination of the applicant's civil rights or obligations. Moreover, "in the context of impeachment proceedings against the President of Lithuania for a gross violation of the Constitution or a breach of the presidential oath, the measures of removal from office and (consequent) disqualification from standing for election involve the head of State's constitutional liability". Consequently, the dismissal procedure was not a conviction or the imposition of a penalty within the meaning of Article 7 of the Convention. This did not mean, however, that the rules of criminal procedure and fair-trial principles did not apply in impeachment proceedings.<sup>10</sup>

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7. In Greece and Italy, the President of the Republic is held liable for acts carried out in the exercise of his or her duties only in the event of high treason or violation of the Constitution. He or she is then tried by an ad hoc court, which in Greece comprises senior judges and in Italy members of the Constitutional Court and citizens. The German Constitution refers to intentional violations, not only of the Constitution but also of other federal laws. The Austrian federal Constitution makes a distinction between two procedures: the first applicable to violations of the Constitution itself and the second for acts subject to criminal prosecution in connection with the exercise of his or her office. The Portuguese Constitution refers only to offences committed in the President's exercise of his or her office without any further precision.

8. In Austria and Germany, the President is judged by the Constitutional Court, while in Portugal he or she is judged by the Supreme Court.

9. *Paksas v. Lithuania*, Application No. 34932/04, judgment of 6 January 2011.

10. *Ibid.*, paragraph 102.



## 2.2. Establishing the political accountability of the head of State and government

17. There are various means or mechanisms in parliamentary systems whereby parliament expresses a political position vis-à-vis the government, seeking to hold the government accountable and showing its disapproval of government policy in order to bring it down or oblige it to resign.<sup>11</sup> A vote of no confidence/no-confidence motion is a procedure initiated by members of parliament seeking to hold the government accountable for its acts. It is entirely political in nature, with no jurisdictional aspect. A vote of confidence is a means enabling the Prime Minister/Government to seek parliamentary support for his/its programme, general policy or a particular bill. Interpellation is the right of parliaments to submit a request for explanations to the government or a minister on a given topic, enabling members of parliament to initiate a debate and adopt a position; in certain countries it can also serve to hold a government accountable for its acts. Parliamentary interpellation of the government as a means of sanction is essentially political in nature, with the aim of holding the government to account.

18. In all member States in which a vote of no confidence or an interpellation is provided for, the constitution, legislation or parliamentary rules of procedure lay down the precise conditions with regard to the initiative of such a procedure and the conditions governing the holding of the debate and the vote.<sup>12</sup>

19. The European Parliament can also vote on a motion of censure on the European Commission (Rule 119 of the Rules of Procedure): such a motion must be tabled by one tenth of the component members of parliament and must be supported by reasons. It is forwarded to the European Commission. The debate and vote on the motion takes place, at the latest, during the part-session following the submission of the motion. The vote takes place by roll call, at least 48 hours after the beginning of the debate. The motion is adopted if it secures a two-thirds majority of the votes cast, representing a majority of the component members of parliament.

## 3. Institutional accountability – legal provisions and practices in member States

20. If the Parliamentary Assembly wishes to introduce a procedure to dismiss its President and other holders of elective offices, it must draw on existing procedures in the few national parliaments whose rules of procedure provide for such a dismissal procedure. In the context of this report, the committee could also study the procedures for triggering the institutional or constitutional accountability of the head of State, to be found in certain national constitutions, which it could draw on *mutatis mutandis*.

21. It should be reiterated that while triggering the “institutional” responsibility of the President of the Republic or a President/Speaker of a parliament through a dismissal procedure undoubtedly has a political dimension, it is not by any means the same as impeachment proceedings and does not relate to criminal responsibility.

### 3.1. Procedure for dismissing a President/Speaker of a parliament

22. Under the rules of procedure of certain national parliaments and of the European Parliament, it is possible to terminate the office of a President/Speaker or Vice-President/Deputy Speaker of an assembly.

23. Rule 21 of the Rules of Procedure of the *European Parliament*, on “Early termination of an office” provides that “The Conference of Presidents may, acting by a majority of three fifths of the votes cast, representing at least three political groups, propose to Parliament that it terminate the holding of office of the President, a Vice-President, a Quaestor, a Chair or Vice-Chair of a committee, a Chair or Vice-Chair of an interparliamentary delegation, or any other holder of an office elected within the Parliament, where it considers that the Member in question has been guilty of serious misconduct. Parliament shall take a decision on that proposal by a majority of two-thirds of the votes cast, constituting a majority of its component Members”.

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11. See the report on parliamentary means of supervising government action, in particular in French-speaking countries, Parliamentary Assembly of La Francophonie, July 2015 (in French only). [http://apf.francophonie.org/IMG/pdf/1a.cap-rapport\\_moyens\\_interpellation\\_gouvernementale.pdf](http://apf.francophonie.org/IMG/pdf/1a.cap-rapport_moyens_interpellation_gouvernementale.pdf).

12. For further details, see in particular detailed replies given by national parliaments to requests made through the European Centre for Parliamentary Research and Documentation (ECPRD): No. 2673 on Policy statement of the Government (2014), No. 1698 on Accountability of Government Members, informing of the parliament and parliamentary oversight procedure (2011), No. 1214 on Votes of no-confidence and other measures available to the parliament to bring down the Government (2009), No. 872 on Parliamentary Votes of Confidence (2007).

24. The President/Speaker of a parliament has an administrative and management function, but above all a representative role: he or she represents parliament in its relations with the other bodies of the State, and the various international partners and organisations. The word “Speaker”, used in a large number of parliaments accurately reflects this role of spokesperson for the institution. A number of constitutions mention the election by parliament of its presiding officer, but refer to legislation or the rules of procedure with regard to the election arrangements, to which are sometimes added arrangements for dismissal.

25. In *Ukraine*, the Speaker of the Verkhovna Rada may be “removed from office” on the ground of inadequate quality of his or her work, including where parliament has barred him or her from conducting the plenary sitting at least three times in the course of a session, or in connection with “any circumstances” making it impossible for him or her to fulfil his or her duties. Removal from office may be proposed by the Committee on the Rules of Procedure (where the Speaker has been barred from presiding over the session at least three times) or by at least one third of the constitutional composition of the parliament. In the proceedings, parliament hears the report of the representative of the members who initiated the call for dismissal, the rapporteur on the matter, the rapporteurs of the temporary committee of inquiry (if it has been set up), and the Speaker’s report on his or her activities. The decision is taken by open vote and by a majority of the constitutional composition.<sup>13</sup>

26. The Rules of Procedure of the State Duma of the *Russian Federation* uses the term “dismissal” (освобождение) of the Speaker, requiring a decision taken by a majority vote of the total number of members of the Duma.<sup>14</sup> The Rules of Procedure of the Federation Council contain a similar provision which, moreover, provides more details on initiation of the procedure which can be at the request of a fifth of the total number of members.<sup>15</sup>

27. The *Hungarian* National Assembly provides for the removal from office of the Speaker by a majority vote.<sup>16</sup> The Speaker of the Chamber of Deputies of the *Czech Republic* may be dismissed upon written request of at least two fifths of all members of parliament.<sup>17</sup> The *Polish* Sejm has an original procedure since the motion to dismiss the Marshal of the Sejm shall simultaneously identify, by name, the candidate for the new Marshal.<sup>18</sup> The motion shall be lodged by at least 46 deputies; the Sejm shall recall and elect a Marshal by an absolute majority of votes in the presence of at least half of the statutory number of Deputies, by a single vote. In the *Serbian* National Assembly, the dismissal of the Speaker shall be subject to the application of provisions of the Rules of Procedure pertaining to the election of the Speaker, i.e. a motion signed by at least 30 members.<sup>19</sup> In *Lithuania*, a proposal to dismiss the Seimas Speaker shall be presented by the Board of the Seimas, a committee, or at least one fifth of the members of the Seimas; the dismissal of the Speaker because of no confidence shall be adopted by secret ballot with a majority of votes cast by more than half of all members of the Seimas; a decision on other grounds shall be adopted by a majority of votes by the members attending the sitting cast by open vote. The Speaker of the National Council of the *Slovak Republic* may be recalled by secret ballot, by more than one half of the votes of all members of the parliament.<sup>20</sup> The *Dutch* Senate may dismiss the President, if he/she no longer enjoys the confidence of the Senate, and appoint a new President.<sup>21</sup> In *Norway*, the parliament does not use a direct procedure but proceeds to the election of a new President if at least one fifth of the members of the parliament send the President a written demand for an election of a new President (the same procedure applies with regard to a Vice-President).

28. In the above-mentioned parliaments (with the exception of the Dutch Senate), the procedure for dismissing or removing from office the Speaker also applies to Deputy Speakers/Vice-Presidents.<sup>22</sup>

29. Lastly, it may be helpful to mention a situation which is not too dissimilar to the one with which the Parliamentary Assembly is currently faced. In Senegal, the Rules of Procedure of the National Assembly were amended in 2008 in order to introduce a procedure to dismiss the Speaker of the Assembly and members of his or her Bureau (“The Speaker of the National Assembly and other members of the Bureau shall be elected

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13. Rules 76 and 77.

14. Rule 9.8.

15. Rule 20.2.

16. Section 6 of Law XXXVI of 2012 on the National Assembly.

17. Paragraph 31 of the Rules of Procedure.

18. Rule 10.a.

19. Rules 30, and 8 to 13.

20. Rule 89. In practice, one Speaker of the National Council was recalled, when the government coalition lost their majority (2011). One Speaker resigned before expiration of his term, when his party left the government coalition (2006).

21. Rule 7.

22. The Russian Federation Council also provides for the dismissal of the Deputy Speaker at the request of the Speaker of the Chamber (Rule 20.2.2).

for a period of one year. They may be re-elected. ... However, the National Assembly may terminate the office of the Speaker or a member of the Bureau by adopting a resolution by an absolute majority. The said resolution shall be tabled by at least 38 members of the Assembly"). When adopting this amendment, it was explicitly stated that these new provisions "shall apply to the current offices of the Speaker of the National Assembly and other members of the Bureau".<sup>23</sup>

### **3.2. Procedure for removing the President of the Republic from office**

30. In *France*, the procedure for removing the President of the Republic from office has been provided for in the Constitution (Article 68) since 2007 and became effective following the enactment of the institutional law of 24 November 2014. This enables Parliament sitting as a High Court to remove the President of the Republic from office for "breach of his or her duties patently incompatible with his or her continuing in office". The concept of breach of duties patently incompatible with continuing in office includes "acts committed or merely revealed during the term of office, whether or not related to presidential duties. They may well be completely unconnected with the exercise of his or her office. Proceedings could, for example, be brought against the President of the Republic for purely private acts, the seriousness of which is such as to be manifestly incompatible with continuing in office".<sup>24</sup>

31. In the dismissal procedure, the assessment of the "breach of duties" clearly falls to parliament. Either the President "no longer ensures the lawful functioning of the public authorities" – does not promulgate the laws passed by parliament, does not convene the Council of Ministers, blocks the functioning of the State or inappropriately uses the powers conferred upon him or her by the constitution – or "his or her personal conduct is incompatible with the dignity of the office (he or she commits a crime, makes unacceptable public statements)"; "through his or her actions and conduct, the head of State becomes unworthy to exercise his or her office".<sup>25</sup>

32. The procedure may be initiated by the National Assembly or the Senate, by means of a motion for a resolution calling for parliament to sit as a High Court, signed by at least one tenth of the members of the assembly before which it is tabled, and stating the grounds which constitute the alleged "breach". It is adopted by a two-thirds majority of its members. The second assembly must then take a decision within 15 days. If it rejects the motion, the procedure is terminated. Dismissal is pronounced by parliament, sitting as the High Court, presided by the Speaker of the National Assembly. It must give its ruling on removal from office within one month, decided upon by secret ballot and by a two-thirds majority of the members. Its decision has immediate effect. No proxy voting is allowed. Only votes in favour of the motion to convene the High Court or of the removal from office are counted.

33. Removal from office means that the Presidency of the Republic falls vacant, and the office is temporarily filled by the Speaker of the Senate. Early presidential elections must be organised within at most 35 days. However, if the President has committed a crime, the immunity of the dismissed incumbent is withdrawn and he or she reverts to being an ordinary citizen, and must, in the normal course of events, answer for his or her acts before the courts.

34. It should be noted that this procedure, in force since 2014, applied to the serving President of the Republic. Furthermore it was initiated against President François Hollande in November 2016 (but the motion for a resolution was deemed to be inadmissible by the Bureau of the National Assembly).

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23. Although its detractors criticised this amendment to the rules as an example of the instrumental conception of the law, it is nonetheless perfectly valid from a legal point of view: the Senegalese Constitutional Council confirmed that these provisions were compatible with the Constitution in a decision of 30 October 2008, stating that "the rules of procedure of each Assembly specify the composition, operating rules of the Bureau and the powers, prerogatives and duration of the term of office of its Speaker" and that the "constitutional law has assigned to the two Assemblies exclusive competence to determine the duration of the term of office of their Speakers, stipulating that the said provisions were retroactive". On 9 November 2008, in application of its amended rules of procedure, the National Assembly, by 112 votes to 21, terminated the office of its Speaker.

24. See the report by the National Assembly's Legislation Committee on draft Institutional Law No. 3071 (rapporteur: Mr Philippe Houillon, No. 3948).

25. Articles by Didier Maus (in French only) in the newspaper *Libération*, 21 October 2014 – [www.liberation.fr/france/2014/10/21/bientot-on-pourra-virer-le-president-de-la-republique\\_1125929](http://www.liberation.fr/france/2014/10/21/bientot-on-pourra-virer-le-president-de-la-republique_1125929); and in the magazine *Challenges* of 11 May 2016: "Imagine, for example, that the President of the Republic has bank accounts abroad, which he has failed to declare to the French authorities. This could be one such example". [www.challenges.fr/monde/bresil-etats-unis-france-les-procedures-pour-destituer-le-president\\_24804](http://www.challenges.fr/monde/bresil-etats-unis-france-les-procedures-pour-destituer-le-president_24804).

### **3.3. Dismissal of members of the government and senior officials**

35. Several States in Europe and in the world have set up, in their constitution or through legislation, procedures for dismissing holders of senior public positions or posts. In many States judges and public prosecutors can be removed from office. In *Switzerland*, the Federal Assembly's Judicial Committee is responsible for preparing the election and removal from office of judges of the federal court, the Federal Attorney General and his or her deputies.

36. In *France*, certain officials with a special status (ministerial officers, judges, civil servants, mayors) may also be removed from office. Dismissal immediately leads to withdrawal of the status of mayor and automatically entails ineligibility for the office of mayor for a period of one year. The law does not specify the grounds justifying dismissal of mayors. However, it can be seen from case law that this measure, which is an administrative penalty, may be taken only in cases of misconduct by the mayor in the exercise of his or her duties or where the mayor is involved in acts which, although unrelated to his or her office, seriously compromises his or her moral authority.

### **3.4. Dismissal of holders of elective offices in international organisations**

37. The *European Parliament* has the authority to dismiss the European Ombudsman (Rule 221 of the Rules of Procedure), at the initiative of one tenth of the European Parliament's component members, "if he no longer fulfils the conditions required for the performance of his duties or is guilty of serious misconduct". The request is forwarded to the Ombudsman and to the committee responsible which, if it decides by a majority of its members that the reasons are well founded, submits a report to Parliament. Following a debate, in which the Ombudsman may be heard at his or her request, Parliament takes a simple majority decision by secret ballot. At least half of Parliament's component members must be present.

38. Under the terms of its Statutes, the President of the Fédération Internationale de Football Association (FIFA), and the chairpersons, deputy chairpersons and members of the Disciplinary Committee, the Ethics Committee, the Appeal Committee, the Audit and Compliance Committee and the Governance Committee may be dismissed by the FIFA Congress.

## **4. Proposal to introduce into the Rules of Procedure a procedure for dismissal of members holding elective offices**

39. The introduction of a mechanism to hold the President of the Parliamentary Assembly to account is prompted by the current role of the President in the Assembly's institutional structure, a role that has increased significantly in importance over the past twenty years. Presidential accountability, which is more institutional than personal or political, is quite simply the democratic counterpart of the political legitimacy, authority and trust that the President is deemed to personify. Establishing this accountability through a mechanism comprising – very rigorously defined – penalties for non-compliance with presidential obligations is an imperative born of the need to ensure that the parliamentary institution functions in a properly democratic manner and that the duty of accountability is properly discharged.

### **4.1. NB: the procedure of challenging credentials does not apply to individuals and does not allow for members holding elective offices to be held to account**

40. Rule 7 of the Rules of Procedure provides for challenges to the credentials of both a delegation and an individual member. But a clear distinction is made between challenges based on technical ("procedural") grounds (Rule 7) and those based on political ("substantive") grounds (Rules 8 and 9). It has been established that, in the case of a challenge on political grounds, only the credentials of a delegation as a whole may be challenged and only the procedure provided for in Rules 8 and 9 will be applicable. Consequently, the credentials of individual members can be challenged only on procedural grounds (Rule 7.1) and, more specifically, only on the basis of the absence of the solemn statement referred to in Rule 7.1.c. No other procedural ground is applicable in individual cases.

41. The limitations of the Rules of Procedure became very apparent in January 2013 when a challenge was sought to the credentials of two members of the Assembly. The Rules Committee held at that time that "the current wording of Rule 7.1.c does not make it possible to challenge the credentials of individual members in an effective manner, particularly so as to sanction the actions or words of a member where these seriously and persistently violate the principles and values defended by the Council of Europe". *De facto*, a member could only have his credentials challenged as an individual if he or she had failed to sign a solemn statement.

42. The Rules Committee subsequently looked at the possibility of amending Rule 7 and separating the procedure for challenging the credentials of an individual member – on the basis of actions or words which seriously and persistently violate the aims and core values of the Council of Europe – from the procedure for challenging the credentials of a whole delegation on the basis of procedural grounds. At its meeting of 15 May 2014 the Rules Committee decided, by a slender majority, against proposing an amendment of this kind to the Rules of Procedure.

#### **4.2. Introduction of a procedure for removal from elective office**

43. The idea of accountability carries an implicit obligation to be “answerable”. As the Inter-Parliamentary Union says in its 2006 text *Parliament and democracy in the twenty-first century: A guide to good practice*, “The accountability of office-holders is nowadays seen as a basic requirement for all public life in a democracy” and it includes the accountability of parliament and its members to their own electorates. It also includes an obligation on parliamentarians to report on their work and to answer questions put to them in the light of that information. This thinking must of course prevail in relations between members of the Parliamentary Assembly and holders of elective offices.

##### **4.2.1. Types of office concerned**

44. Elective office is understood to mean any position within the Assembly that is filled by election and conferred upon its holder by the members of the Assembly so that he/she shall act on their behalf, within the agreed rules and for a fixed period of time. Those concerned by the procedure in question are therefore the President of the Parliamentary Assembly, its Vice-Presidents, and the chairpersons and vice-chairpersons of committees.

45. Although the chairpersons and vice-chairpersons of sub-committees also hold elective office, they must be excluded from the proposed procedure, since sub-committees do not have decision-making powers (Rule 49.8).

46. Rapporteurs are a special case and should also not be included in the procedure. Rapporteurs are required to comply with the rules set forth in the code of conduct for rapporteurs of the Parliamentary Assembly (Rule 50.1). If the rules of this code are breached and “Should a rapporteur fail to honour one or more undertakings, the committee [concerned] may withdraw [the rapporteur’s] mandate and replace him or her” (paragraph 3). Rapporteurs are, moreover, not “elected” but “appointed” (where appropriate by secret ballot) by the committee on whose behalf they report.

##### **4.2.2. Principle of parliamentary autonomy**

47. Under the principle of parliamentary autonomy – an expression of the separation of powers – parliaments have sole responsibility for setting the rules governing their internal organisation, their functioning, the procedures for the exercise of their constitutional powers, and the rules for disciplining their members.

48. Just as this principle of parliamentary autonomy is (generally) embodied in national constitutions, Article 28.a of the Statute of the Council of Europe (ETS No. 1) establishes the principle that the Parliamentary Assembly is sovereign in setting its own operating rules (“The Consultative Assembly shall adopt its rules of procedure”). And just as the procedural rules of national parliaments have to be consistent with their national constitutions, the Parliamentary Assembly’s Rules of Procedure must be consistent with the Statute of the Council of Europe.

49. The Rules of Procedure are a parliament’s self-enacted in-house “laws”; the rules it sets are valid only in respect of their in-house objective. In national parliaments,<sup>26</sup> as in the Parliamentary Assembly (Rule 68), the principle of parliamentary autonomy means that only members of parliament may seek to amend the Rules of Procedure. The Assembly is consequently free to initiate changes to its Rules of Procedure and to introduce new procedures, with due regard for the procedures put in place to that end.

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26. In France, for example, the National Assembly’s Rules of Procedure are adopted and amended by a resolution of the Assembly. This is an internal act, an “in-house ruling” which has no constitutional or legislative value but must be consistent with the Constitution and the institutional laws enacted for its implementation. Amendment of the Rules of Procedure may be subject to scrutiny by the Constitutional Council.

The Rules of Procedure of the two houses of Russia’s Federal Assembly are adopted by decrees that are infra-legislative acts. This is also the case for the Polish Sejm (resolution) and the Serbian National Assembly (decision).

#### 4.2.3. Procedure for dismissal of the President and Vice-Presidents of the Assembly

50. Specifically, precise rules are needed for all stages of the procedure for dismissing holders of elective offices within the Assembly. Firstly, there should be two distinct procedures, one for dismissal of the President and Vice-Presidents of the Assembly and the other for the chairpersons and vice-chairpersons of committees.

51. In the case of the procedure for dismissal of the President and Vice-Presidents of the Assembly, the committee must clarify the following points – with reference also to existing parliamentary procedures (Section 3.1):

- initiative: who may introduce the request for dismissal? What is the minimum number needed to introduce the request? What grounds must be given in support of the request? In what form must the request be submitted?
- prior examination of the request: Should the procedure be simple and direct with immediate debate in the plenary followed by a prompt vote in the Assembly, or a more comprehensive procedure (referral to the Bureau and/or appropriate committee for consideration of admissibility, drafting of a report by the appropriate committee, compliance with the time limits for circulation of the report)?
- criteria for debating and voting on the motion: Should there be a plenary debate following the “normal” procedure, or rather an “ad hoc” procedure? Should the vote be electronic or by secret ballot? What should the required majority be: simple majority of votes cast or a qualified majority?

52. Regarding the criteria for admissibility of the dismissal request, the terms governing challenges to the credentials of a national delegation should be kept in mind (Rule 9 says that “a motion for a resolution to annul ratification shall be tabled by at least fifty representatives or substitutes, belonging to at least two political groups and five national delegations”). As the procedure for dismissal is exceptional and of major importance, the criteria may also be stricter: challenges may be broader-based and submitted by at least one tenth of the Assembly’s members (currently 65 members, whether representatives or substitutes), belonging to at least three political groups and ten national delegations. It is self-evident that a specific additional provision is needed in order to prevent such procedures from multiplying over time, in particular successive initiatives taken against one and the same member.

53. Regarding the form of a dismissal request, requests could be submitted as written motions tabled in both official languages, signed by the members supporting them and published as official documents of the Assembly (Rule 24.2.c).

54. Regarding the grounds substantiating a dismissal request, the following grounds are proposed, as reasons justifying the breach of confidence:

- breach of the duties associated with the member’s office;
- misconduct likely to bring discredit to the member’s office; involvement in matters undermining the member’s moral authority;
- serious misconduct;
- serious or repeated violation of the principles and rules of the code of conduct applicable to members of the Assembly;
- failure to subscribe to and uphold the aims and basic principles of the Council of Europe (Rule 6.2.b).

55. Regarding the procedure for considering requests, the committee may propose alternative procedures:

- a multi-stage procedure whereby the motion for dismissal is forwarded to the Rules Committee for an opinion on the admissibility of the request, specifically in terms of the reasons given; the opinion is approved within 24 hours following the reference (if the reference is made in the course of a part-session of the Assembly, or otherwise at the meeting which immediately follows the reference); the debate in the plenary and the vote of the Assembly take place within 24 hours after the approval of the committee’s opinion;

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In Ukraine, the Rules of Procedure of the *Verkhovna Rada* are amended by laws adopted using the ordinary legislative procedure. Rules of Procedure are also adopted by legislation in Latvia, Estonia, the Czech Republic and the Slovak Republic, for example.

- a swift and direct procedure whereby the motion for dismissal is immediately submitted for a debate in the plenary and to the vote of the Assembly within 24 hours after its publication (if it is issued in the course of a part-session, or otherwise at the opening of the part-session which immediately follows its publication); such a procedure would require stronger conditions with regard to the number and quality of its initiators.

56. It is suggested that a debate be held, with, as the only speakers, the first signatory of the motion for dismissal, the chairperson of the Rules Committee (if preference is given to the first procedure), the chairperson of each political group (or his/her representative), and the President or the Vice-President of the Assembly concerned. The motion put to the vote cannot be amended.

57. Regarding the actual vote, it is suggested to respect a transparency requirement and not to use secret ballot (Rule 40.11 of the Rules of Procedure *mutatis mutandis*) but rather the electronic voting system – it being understood that members' individual votes would be made public (Rule 40.5) –, and subject to the quorum rule. The committee must, however, decide how many votes are needed for the procedure to be valid, a two-thirds majority being the rule at present for important decisions by the Assembly (Rule 41).

#### **4.2.4. Procedure for dismissal of committee chairpersons and vice-chairpersons**

58. It is self-evident that the proposed procedure in the plenary Assembly for dismissal of a President or Vice-President of the Assembly will have to be adapted for application to committees, in respect of how the procedure is initiated (written motion signed by one third of the committee's full members, belonging to three political groups and five national delegations). The motion is sent to the chairperson of the committee and placed *de jure* on the agenda for the next meeting following its receipt by the committee secretariat. The rules for discussion by the committee could doubtless be more flexible than those for debate in the plenary Assembly, and the vote could be held immediately after discussion in committee. However, the rules on voting to dismiss a committee chairperson or vice-chairperson must be similar to those for dismissal of the President or a Vice-President of the Assembly (quorum, transparent vote, two-thirds majority).

#### **4.3. Consequences of a vacancy**

59. Removal from office of a President or Vice-President of the Assembly, or of a committee chairperson or vice-chairperson, does not affect his/her status as a member of the Assembly (as per Article 25 of the Council of Europe Statute and Rules 6 and 11 of the Rules of Procedure). It would be a good idea, however, to think about additional measures which might apply *ex officio* once a dismissal decision is taken by the Assembly. Accordingly, the Rules of Procedure should expressly state that a President of the Assembly who has been dismissed may not enjoy the benefits of Rule 20.3 and may not, as "immediate past President", be an *ex officio* member of the Committee on Political Affairs and Democracy, the Monitoring Committee and the Committee on Rules of Procedure, Immunities and Institutional Affairs. Nor should he be given the title of Honorary President of the Parliamentary Assembly or, as the case may be, depending on the assessment made of the seriousness of the facts which gave rise to the motion for dismissal, the title of honorary associate of the Parliamentary Assembly. Similar measures are needed for vice-presidents.

60. Dismissal of a holder of an elective office within the Assembly creates a vacancy for that office requiring the Assembly, or the committee concerned, to hold new elections in accordance with the current Rules of Procedure. Clearly, dismissed members cannot apply for such vacancies, either immediately or later.

61. Furthermore, the situation in which the Assembly found itself during the April part-session and indeed since then, with regard to the impossibility of its President to exercise all or some of his functions, including the chairing of sittings and Bureau meetings, highlights a shortcoming in its Rules of Procedure: the Rules do not cover all situations where there is a vacancy in the exercise of presidential office, and in particular they do not provide for cases where there is some kind of impediment. The rules of procedure of other inter-parliamentary assemblies and national parliaments are more comprehensive in this respect. Within the framework of the present report, Rule 15.5 of the Rules of Procedure should be supplemented to clarify current arrangements in the event of a vacancy in presidential office, which are complex, and insert a clause automatically tasking the most senior vice-president with exercising these functions in the event of a vacancy or an impediment.

#### **4.4. Compliance with the principle of legal certainty**

62. As the Venice Commission points out,<sup>27</sup> the general principle of legal certainty presupposes that "laws" are written in an intelligible manner and that their effects are foreseeable ("Foreseeability means not only that the law must, where possible, be proclaimed in advance of implementation and be foreseeable as to its



effects: it must also be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it"; new legislation must clearly state whether previous legislation is repealed or amended<sup>28</sup>), must state that it will be the subject of public debate, and that it will be consistently applied. On the matter of retroactivity, the Venice Commission says that "[p]eople must be informed in advance of the consequences of their behaviour. This implies foreseeability and non-retroactivity especially of criminal legislation. ... However, outside the criminal field, a retroactive limitation of the rights of individuals or imposition of new duties may be permissible, but only if in the public interest and in conformity with the principle of proportionality".

63. This principle of legal certainty must, of course, underlie the proposals contained in this report which are being put to the Assembly. Obviously the draft resolution put forward must specify in detail the procedure proposed and the date on which the amendments it makes to the Assembly's Rules of Procedure will take effect.<sup>29</sup> It must also formally state that the new procedure will apply to current incumbents.<sup>30</sup>

64. It should be pointed out here that, legally, one cannot talk of retroactivity in connection with this new procedure, if adopted. Retroactivity is the effect of applying a law or rule to legal facts and acts which predate its entry into force.<sup>31</sup> The principle of non-retroactivity does not stop a legislative text from imposing effects in the future on a situation from the past. "No holder of an elective office can claim to have acquired rights in his or her own personal capacity. He or she has simply acquired the status which goes with the office to which he or she has been elected, and that status can change at any time, provided this takes place in accordance with predetermined forms and criteria"<sup>32</sup>: he or she occupies an office but does not own it. For the holders of legislative power, exercise of that power means that they can change the rules they set at any time, and those who may be subject to new constraints as a result cannot invoke any right to preservation of the existing rules.<sup>33</sup>

65. By way of illustration it should also be pointed out that the Venice Commission, in its various highly critical opinions on constitutional reforms undertaken by some States with a view to abolishing the limit on the number of consecutive terms a president may serve,<sup>34</sup> has never argued that abolition of the limit and

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27. Rule of Law Checklist, Study No. 711/2013 (CDL-AD(2016)007 adopted by the Venice Commission on 11-12 March 2016.

28. "The necessary degree of foreseeability depends however on the nature of the law. In particular, it is essential in criminal legislation. ... but the Rule of Law implies that the principle of foreseeability is not set aside" (paragraph 59).

29. Under the Rules of Procedure of the Russian Duma, for example, the Rules and amendments to them take effect on the day they are adopted, unless the chamber decides otherwise (Rule 217). In the absence of any special provisions and if Parliament does not stipulate a date for their entry into force, amendments to the Rules of Procedure that are voted into law take effect in accordance with the ordinary procedure for national laws (i.e. once they are published).

30. Parliament can agree transitional measures for the implementation of new procedures, for example concerning the registration of political groups or appointments to certain posts or positions. For instance, the Rules of Procedure of Slovenia's National Assembly explicitly stated in 2002 that the new rules on the Secretary General and the Head of the Legislative and Legal Service would apply after the end of the current incumbents' term of office.

31. Amendments to the Rules of Procedure must not challenge established rights or seek to influence ongoing proceedings and so affect their outcome. The 2002 amendment to the Rules of Procedure of the Czech Republic's Chamber of Deputies stated that "Any act having the character of an offence committed by a Deputy or a Senator before the effective date of this act of law shall be considered in compliance with previously effective legal regulations." In the above mentioned judgment *Paskas v. Lithuania*, the European Court of Human Rights stated that "insofar as the rule in question entails [Mr Paskas'] ineligibility for parliamentary office, it was not applied retrospectively in the applicant's case. In fact, the first parliamentary elections in which he was barred from standing were held in October 2004, long after the above mentioned ruling and legislative enactment".

32. Guy Carcassonne, professor of constitutional law, in an opinion of 2010 on limiting the number of terms the President of the Republic can serve and application of this new rule to the incumbent, adds that "The law is not retroactive here but applies only to the present and henceforth .... If the voters suddenly decided to do away with the position of President of the Republic, replacing it with a collegiate body for example (as in Switzerland), the incumbent could not expect to remain in office for the sole reason that he or she had been elected for a five- or seven-year term and was accordingly entitled to serve out his term. That would be an autocratic interpretation of his or her office, without basis or justification".

33. In France, the principle of non-retroactivity applies only to criminal law measures (non-retroactivity of a stricter criminal law which has constitutional value – see also Article 7 of the European Convention on Human Rights). Non-retroactivity cannot in general apply to a law which may authorise the application of new rules to existing situations, including contractual situations. Future consequences of the situation in question will be governed by the new law (immediate effect of the new law).

34. [Opinion No. 518/2008](#) on the draft amendments to the Constitution of the Republic of Azerbaijan (CDL-AD(2009)010) adopted by the Venice Commission on 13-14 March 2009; [Opinion No. 314/2004](#) on the referendum of 17 October 2004 in Belarus (CDL-AD(2004)029) adopted on 8-9 October 2004.



subsequent application of this measure to the holder of the office was a breach of any legal principle of “non-retroactivity” (since the main reason for such changes was obviously to extend the term of the president concerned).

66. Consequently, if the Parliamentary Assembly were to amend its Rules of Procedure and introduce a new procedure for dismissing members holding elective offices, that procedure could be immediately applicable and, if the Assembly so decides, could apply to current incumbents.

## **5. Proposals for amendment of the Rules of Procedure**

67. Article 28.a of the Statute of the Council of Europe establishes the principle that the Parliamentary Assembly is sovereign in setting its operating rules: “The Consultative (Parliamentary) Assembly shall adopt its rules of procedure”, stipulating that “The rules of procedure shall determine inter alia: ... ii. the manner of the election and terms of office of the President and other officers ...” (Article 28.c).

68. Consequently, the Rules Committee intends to submit proposals to the Assembly for amendment of its Rules of Procedure and the introduction of a procedure for dismissal of the Assembly’s President and Vice-Presidents, on the one hand, and a procedure for dismissal of committee chairpersons and vice-chairpersons on the other hand (see Sections 4.2.3 and 4.2.4).

69. Lastly, as explained earlier (Section 4.4) and in line with the principle that parliaments are sovereign in respect of the rules governing their internal organisation and the conduct of their business, the Assembly could freely decide the date on which the new rules come into force. It is therefore proposed that the resolution should be effective immediately upon adoption and that its provisions should apply to the current incumbents of the offices of President of the Parliamentary Assembly, Vice-Presidents and the chairpersons and vice-chairpersons of committees.