



Parliamentary Assembly  
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3 June 2019

## **Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting**

Report<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Ms Petra De Sutter, Belgium, Socialists, Democrats and Greens Group

*Summary*

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<sup>1</sup> Reference to committee: References 4400 of 9 October 2018

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

1. As it celebrates its 70th anniversary, the Parliamentary Assembly reiterates its commitment, as one of the statutory organs of the Council of Europe, to resolutely promote the aims of the Organisation, as set forth in the Preamble to and Articles 1 and 3 of the Statute of the Council of Europe (ETS No. 1). It recalls the numerous resolutions it has adopted over the last few decades both to strengthen its capacity to act in this area and to state its position on the failure of given member States to honour the statutory obligations they entered into upon joining the Council of Europe.

2. As it has done regularly in the past, the Assembly intends to constructively analyse the consistency, relevance, effectiveness and legitimacy of its procedures and mechanisms in the light of the goals it has set itself. It may find it necessary to change its practices and adjust its rules, were a revision of its machinery and procedures to prove indispensable to guarantee more effectively the principles and values that are the "common heritage of the peoples" of Europe and to uphold more resolutely the Council of Europe's fundamental values of democracy, the rule of law and human rights.

3. The Assembly welcomes the numerous contributions submitted by its parliamentary delegations and political groups in the context of the Ad Hoc Committee on the Role and Mission of the Parliamentary Assembly set up by the Bureau in December 2017, which showed the delegations' and political groups' deep commitment to the Council of Europe's fundamental values and principles, their promotion, their protection and to the monitoring of the member States' respect for them. It notes with great satisfaction the unwavering backing clearly expressed for the existing supervision machinery it has developed for over 25 years to ensure that member States respect the principles and values of the Council of Europe and the statutory obligations and commitments they have entered into by joining the Council of Europe.

4. The Assembly takes into consideration the decision adopted by the Committee of Ministers of the Council of Europe at its 129th Session (Helsinki, 17 May 2019) on "A shared responsibility for democratic security in Europe – Ensuring respect for rights and obligations, principles, standards and values". It welcomes the positive reception by the Committee of Ministers of its call for an enhanced political dialogue between the Committee of Ministers and the Parliamentary Assembly, and its recognition of the urgent need to develop synergies and provide for coordinated action by the two statutory organs, in recognition of their respective mandates. The Assembly therefore welcomes the Committee of Ministers' encouraging support for the proposal it made in Resolution 2277 (2019) and Recommendation 2153 (2019) on "Role and mission of the Parliamentary Assembly: main challenges for the future" to set up, in addition to existing procedures, a joint procedure of reaction, which could be initiated by either the Parliamentary Assembly, the Committee of Ministers or the Secretary General, "in order to strengthen the Organisation's capacity to react more effectively in situations where a member State violates its statutory obligations or does not respect the standards, fundamental principles and values upheld by the Council of Europe". For its part, the Assembly is firmly committed to making this proposal operational as soon as possible.

5. The Assembly also notes that the Committee of Ministers "having regard to the importance of the elections of the Secretary General and of judges to the European Court of Human Rights, would welcome that delegations of all member States take part in the next June part-Session of the Parliamentary Assembly".

6. The Assembly recalls that, in accordance with the provisions of its Rules of Procedure, in full conformity with the Statute of the Council of Europe, the term of office of delegations of national parliaments to the Assembly take effect at the opening of the Ordinary Session, when their credentials are ratified.

7. Taking into consideration the Committee of Ministers' decision in Helsinki, as well as the exceptional context which led to it, the Assembly decides by way of derogation from Rules 6.1 (last sentence) and 6.3 of its Rules of Procedure, relating to the transmission of credentials of national delegations to the President of the Assembly and their ratification by the Assembly, and Rule 11.3 on the appointments following parliamentary elections, to invite the parliaments of Council of Europe member States which are not represented by a delegation to the Assembly to present the credentials of their representatives and substitutes at the June 2019 part-session of the Assembly. These credentials shall be submitted to the Assembly for ratification at the next sitting following their transmission.

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<sup>2</sup> Draft resolution adopted by the committee on 3 June 2019.

8. The Assembly notes with the Committee of Ministers that the member States of the Council of Europe are “entitled to participate on an equal basis in the two statutory organs of the Council of Europe”, within the terms fixed in Articles 14, 25 and 26 of the Statute of the Council of Europe. It recalls its Resolution 2277 (2019) in which it underlines that Council of Europe membership implies an obligation of all member States to participate in both statutory organs. It furthermore recalls, in this respect, that all parliamentary delegations enjoy the same rights under its Rules of Procedure and are subject to the same obligations in accordance with procedures that apply equally to all.

9. However, the Assembly recalls that it may decide, pursuant to Rule 10.1.c of its Rules of Procedure, to take collective measures against its members by depriving or suspending the exercise of a number of participation and/or representation rights in the activities of the Assembly and its bodies, based on a breach or a violation of the provisions of its Rules of Procedure or the Statute of the Council of Europe, in the context of the procedure for challenging or reconsidering national delegations’ credentials on procedural or substantive grounds.

10. The Assembly recalls that the members’ rights of participation or representation in the activities of the Assembly and its bodies that may be deprived or suspended by the Assembly are not listed in the Assembly’s Rules of Procedure. It is up to the Assembly, when deciding, by resolution, on a challenge to or reconsideration of credentials to determine the rights that may be affected. However, in order to ensure the coherence of the Organisation’s internal legal framework, the Assembly, in its decisions, should continue to comply with the Statute of the Council of Europe and to take into due consideration relevant decisions taken by the Committee of Ministers. Therefore, to ensure that the member States’ right and obligation to be represented and to participate in both statutory bodies of the Council of Europe is respected, the Assembly decides to supplement Rule 10 of its Rules of Procedure, adding after Rule 10.1.c the following clarification:

*“The members’ rights to vote, to speak and to be represented in the Assembly and its bodies shall not be suspended or withdrawn in the context of a challenge to or reconsideration of credentials”*

11. Finally, the Assembly considers that the issue of supplementing its Rules of Procedure with regard to introducing a procedure for challenging the credentials of individual members of a national delegation on substantial grounds deserves further consideration.

12. The Assembly decides that the amendments to the Rules of Procedure set out in the present resolution shall enter into force upon its adoption.

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## **B. Explanatory memorandum, by Ms Petra De Sutter, rapporteur**

### **1. The committee's terms of reference**

1. At its meeting on 29 June 2018, the Bureau of the Assembly took note of the report of the Ad Hoc Committee on the Role and Mission of the Parliamentary Assembly<sup>3</sup> and decided to transmit it to the Committee on Rules of Procedure, Immunities and Institutional Affairs so that, when preparing a report to be presented at the Assembly's October 2018 part-session, it could examine "the proposals aimed at maintaining, changing or supplementing the Rules governing ratification or challenging of credentials and/or representation or participation rights of national delegations for report" as well as the "proposals regarding the voting rights of members or the voting procedures of the Assembly".

2. It will be recalled that the ad hoc committee was set up by decision of the Bureau of 15 December 2017 with the aim of conducting prior reflection involving as many stakeholders as possible in the Assembly in order to prepare concrete proposals for the implementation of paragraphs 16-18 of Resolution 2186 (2017) on a Call for a Council of Europe summit to reaffirm European unity and to defend and promote democratic security in Europe.<sup>4</sup> The task of the ad hoc committee was:

– to reflect on, and if possible prepare, proposals aimed at harmonising the rules governing participation and representation of member States in both statutory organs, while fully respecting the autonomy of the two bodies;

– to prepare proposals as regards the role and mission of the Parliamentary Assembly as a statutory organ of the Council of Europe and a pan-European forum for interparliamentary dialogue which aims at having an impact in all Council of Europe member States."

### **2. Context for the drafting of this report**

3. The committee's deliberations were summarised in a report which was approved virtually unanimously on 20 September 2018.<sup>5</sup> This report was presented to the Assembly at its October 2018 part-session. It included a draft resolution proposing to:

– enhance the consistency of the procedures for challenging and reconsidering national delegations' credentials on substantive grounds, by merging the present Rules 8 and 9 of the Rules of Procedure into a single rule, unifying the requirements for initiating these procedures, and strengthening them;

– reinforce the legitimacy of the Assembly and the authority of its decisions in cases where it decides on a challenge to or reconsideration of the credentials of a national delegation, whether on formal or substantive grounds, by stipulating that these decisions require a quorum of Assembly members (namely one third of the representatives or substitutes authorised to vote) and a two-thirds majority of the votes cast;

– restrict the scope of sanctions incurred by members of delegations whose credentials have been ratified but have had the exercise of certain rights of participation or representation in the activities of the Assembly suspended.

4. The report also included a draft recommendation, reiterating the Assembly's commitment to the mechanisms and procedures it had developed to ensure respect by member States for the principles and

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<sup>3</sup> See the revised memorandum of the President of the Assembly (document AS/Bur/MR-PA (2018) 06 rev, 5 June 2018, declassified) and the ad hoc committee's report (document AS/Bur/MR-PA (2018) 08, 28 June 2018).

<sup>4</sup> "16. Therefore, the Assembly, as part of the preparatory work for the summit, resolves to initiate a procedure aimed at harmonising, jointly with the Committee of Ministers, the rules governing participation and representation of member States in both statutory organs, while fully respecting the autonomy of these bodies. This coherence should strengthen the sense of belonging to a community and of the obligations incumbent upon every member State.

17. This common reflection could be carried out jointly by the Assembly and the Committee of Ministers within an ad hoc working group set up by the Joint Committee. For this process to be credible and fruitful, the whole Assembly and every single member State should do their utmost to ensure that all member States of the Organisation will be fully represented in the process on both the parliamentary and intergovernmental sides in strict compliance with their respective obligations and resolutions.

18. In the meantime, and as part of the preparatory work for the summit, the Assembly resolves to continue its own reflection on its identity, role and mission as a statutory organ of the Council of Europe and a pan-European forum for interparliamentary dialogue which aims at having an impact in all Council of Europe member States. This reflection would also enable the Assembly to provide its own vision of the future of the Organisation."

<sup>5</sup> Doc. 14621, report on "Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting".

values of the Council of Europe, and inviting the Committee of Ministers to engage in its own discussion on the effectiveness of its procedures and its ability to respond effectively to violations of the statutory obligations entered into by the member States, in the spirit of the aforementioned Resolution 2186 (2017).

5. The committee presented this report to the Assembly on 9 October 2018. Following an intense and lively debate, which included both rational arguments and more emotional responses, the Assembly decided to refer the report back to the committee, at my request, given the divisions in the Chamber and the absence of a calm and depoliticised atmosphere in which to debate the committee's proposals. Since then, the committee has held two exchanges of views on what it intended to do with the report and the proposals it contained, during which a wide range of positions were expressed. However, there was a very clear majority in the committee for not submitting to the Assembly the same report as the one it had adopted in September 2018.

6. I believe that the initial report contained some useful and relevant proposals, which dealt with problems of common interest to all member states and national delegations to the Assembly, which it would be a pity to lose. Nor can we ignore the contributions made by national delegations and political groups in the ad hoc committee, calling for improvements to the existing procedures. A new report should therefore be submitted to the Assembly at an appropriate time and in a calmer climate, picking up on those proposals which seek to ensure greater consistency in the Assembly's action.

7. The scope of this report has therefore been substantially reduced to just those points on which there could still be consensus in the committee, namely the question of restricting the scope of the sanctions to be imposed on members of delegations whose credentials have been challenged. It should be recalled in this connection that the committee had been asked by the Bureau of the Assembly in November 2018 to "review the list of rights of participation and representation whose exercise may be deprived or suspended in the context of a challenge of credentials under Rule 10.1.c with respect to voting rights in the procedure for electing personalities by the Assembly"; in December 2018 the committee approved an opinion which clarified the issue (see Chapter 3.4 below).

8. This report will therefore not address the other points discussed by the committee in September 2018.

9. Similarly, this report will not examine the question of harmonising procedures between the Committee of Ministers and the Parliamentary Assembly, or improving the dialogue between the two statutory organs over existing mechanisms.<sup>6</sup> There is therefore no longer any need to submit a draft recommendation to the Committee of Ministers.

10. The report by the Committee on Political Affairs and Democracy entitled "Role and mission of the Parliamentary Assembly: main challenges for the future" (Rapporteur: Mr Tiny Kox, Netherlands, UEL) discussed on the Assembly at its April 2019 part-session contains a detailed analysis of the proposals made within the framework of the ad hoc committee as regards enhancing the dialogue between the Assembly and the Committee of Ministers. Resolution 2277 (2019) and Recommendation 2153 (2019) include in particular a proposal for the establishment, in addition to existing procedures, of a joint procedure of reaction of the Committee of Ministers and the Parliamentary Assembly, in several steps, in situations where a member State violates its statutory obligations or does not respect the fundamental principles and values upheld by the Council of Europe. Moreover, in Resolution 2277 (2019), the Assembly stressed that "Council of Europe membership implies an obligation of all member States to participate in both statutory organs." At the same time, the Assembly "called on the Russian Federation, in accordance with its statutory obligations, to appoint a delegation to the Assembly and to resume obligatory payment of its contribution to the Organisation's budget".

11. At its 129th Ministerial Session (Helsinki, 17 May 2019), the Committee of Ministers of the Council of Europe took into consideration Assembly Recommendation 2153 (2019) and welcomed the Assembly's call for an enhanced political dialogue between the Committee of Ministers and the Assembly, as well as its proposal to set up this joint reaction procedure. Moreover, the Committee of Ministers recalled that "all member States shall be entitled to participate on an equal basis in the two statutory organs of the Council of Europe, as long as Articles 7, 8 or 9 of the Statute have not been applied". Furthermore, "having regard to the importance of the elections of the Secretary General and of judges to the European Court of Human

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<sup>6</sup> It shall be recalled that the Committee of Ministers and the Parliamentary Assembly have multiplied meetings at different levels in recent months: the Joint Committee met on three occasions (28 June 2018, 8 October 2018 and 24 January 2019); the PACE Presidential Committee and the Bureau of the Committee of Ministers held six meetings, on 11 October 2018, 13 December 2018, 21 January 2019, 28 February 2019, 12 April 2019 and 23 May 2019, in which the Secretary General of the Council of Europe took part.

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Rights, [the Committee of Ministers] would welcome that delegations of all member States take part in the next June part-Session of the Parliamentary Assembly".

12. It is important for the Assembly to react to the decision adopted by the Committee of Ministers at its 129th Session entitled "A shared responsibility for democratic security in Europe – Ensuring respect for rights and obligations, principles, standards and values". In this context, the Bureau of the Assembly, at its meeting on 23 May last, has instructed Committee on Rules of Procedure to take the Committee of Ministers' decisions into account in the preparation of the present report. Therefore, in the present report and in the proposed new draft resolution, I will propose to the committee a way to reflect these decisions in the Assembly's Rules of Procedure (Chapters 4 and 5 below). But, before doing so, I would like to recall the legal and regulatory framework that governs the powers and competences of the Assembly (Chapter 3 below).

### 3. Powers and competence of the Parliamentary Assembly

#### 3.1. *The statutory provisions*

13. Article 10 of the Statute of the Council of Europe stipulates that "*The organs of the Council of Europe are: i. the Committee of Ministers; ii. the Consultative [Parliamentary] Assembly*", and, in chapter V, sets out in detail the prerogatives of the Assembly, "*the deliberative organ of the Council of Europe.*"

14. Under Article 1 of the Statute, the Parliamentary Assembly is, like the Committee of Ministers, the other statutory body responsible for contributing to the achievement of the Council of Europe's aim ("*The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. This aim shall be pursued through the organs of the Council, by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.*")

15. Under Article 28 of the Statute, the Parliamentary Assembly adopts its Rules of Procedure and is free to amend them. The Rules of Procedure derive from the Statute of the Organisation, and, through special provisions, serve to specify the general provisions it contains. Article 28 of the Statute confers on the Assembly the exclusive competence for enacting its own rules. The fact that the Statute requires certain elements of procedure to be included in the Rules of Procedure cannot limit the competences of the Assembly to adopt rules that it considers necessary for its proper functioning.<sup>7</sup>

#### 3.2. *The regulatory provisions*

16. The Statute of the Council of Europe expressly provides for the competence of the Assembly to verify the credentials of its members. The provisions of Rules 6 et seq. of the Rules of Procedure concerning the composition of national delegations and the examination of credentials are based on Articles 25, 26 and 28 of the Statute.<sup>8</sup> The Assembly is sovereign as to the conditions of representation of national parliaments within it.

17. It is on this whole statutory basis that the Parliamentary Assembly has, since 1949, introduced a general procedure for the examination of the credentials of its members at the opening of the annual session (corresponding to Rules 6.3, 6.4, 7 and 8 of the Rules of Procedure currently in force), as well as a procedure for challenging credentials during a session (Rule 9), it being understood that it is on this same statutory basis that the Assembly has devised special procedures for challenging credentials since 1964.

18. Regardless of whether a challenge to a national delegation's credentials is based on formal grounds (Rule 7 of the Rules of Procedure) or substantive grounds (Rules 8 and 9), Rule 10 of the Assembly's Rules of Procedure on Assembly decisions on a challenge or reconsideration of credentials lists only three possible alternatives:

- 10.1.a. ratification of the credentials, or confirmation of ratification of the credentials,*
- 10.1.b. non-ratification of the credentials, or annulment of ratification of the credentials;*

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<sup>7</sup> The articles relating to the Assembly's constitution, organisation and functioning (Articles 23 to 35 of the Statute) may not be changed without its consent and any amendment must be approved by the Assembly itself.

<sup>8</sup> Article 28 c. of the Statute states that "*the Rules of Procedure shall determine inter alia: ... iv. the time and manner in which the names of the Representatives and their Substitutes shall be notified.*"

*10.1.c. ratification of the credentials, or confirmation of ratification of the credentials together with depriving or suspending the exercise of some of the rights of participation or representation of members of the delegation concerned in the activities of the Assembly and its bodies.”*

19. The Assembly may decide to take collective measures against its members by the deprivation or suspension of the exercise of a number of participation and/or representation rights, based on a breach or a violation of the provisions of its Rules of Procedure or the Statute of the Council of Europe, in the context of a procedure, that of a challenge to or reconsideration of the credentials of national delegations for procedural or substantive grounds. There is in the Rules of Procedure no “autonomous” sanctions procedure with respect to a delegation or a member of the Assembly (with the exception of the Code of Conduct for members of the Assembly in the latter case).

20. The Assembly's Rules of Procedure lay down no list of participation and representation rights that may be deprived or suspended in the context of a challenge to credentials. Rule 10.1.c of the Rules of Procedure sets out a description of the sanctions which may be imposed on the members of a delegation in general terms only and it is up to the Assembly to determine the extent of the “sanction” when it is called upon to decide, by resolution, on a challenge to credentials.

### *3.3. Catalogue of potential “sanctions” – the 2014 opinion of the Committee on Rules of Procedure*

21. For this reason, in April 2014 (in the context of the decision taken by the Assembly to suspend certain rights of the delegation of the Russian Federation (Resolution 1990 (2014)), the Bureau of the Assembly instructed the Committee on Rules of Procedure – pursuant to its exclusive general competence for interpreting the Rules of Procedure (Rule 70.2) – to clarify the regulatory framework and to draw up a list of rights of representation and participation of which members may be deprived in the context of a challenge to or reconsideration of credentials.<sup>9</sup>

22. To date, there is no other framework for the implementation of Rule 10.1.c than the Opinion to the Bureau of the Assembly that the Rules Committee approved on 30 September 2014<sup>10</sup> and which is the only basis for the Assembly's decision when determining restrictive measures against a delegation. This opinion of the Rules Committee:

- draws up a list of rights of participation and representation in the activities of the Assembly and its bodies that may be suspended or deprived in the context of a challenge to credentials, while pointing out that such a list cannot be exhaustive;
- also establishes a rigorous general framework to ensure that the Assembly's decision on the deprivation or suspension of rights is clear, consistent, rational and understandable, namely that any decision by the Assembly to adopt sanctions should retain a degree of regulatory rationality and legal consistency so as to meet the need for legal certainty which must apply to any decision of this importance.

23. In its Opinion, the committee draws up the following list of rights attached to the exercise of a member's functions in the Assembly, which are linked both to the activities of the Assembly and to those of the committees, divided into two main categories:

#### *1/ Participation rights include the following rights:*

- right to vote (Rule 43)
- right to speak (Rule 35)
- right to speak in free debates (Rule 39)
- right of amendment (Rule 34)
- right to table motions for resolution or recommendation (as main mover or signatory) (Rule 25)
- right to table written declarations (Rule 54)
- right to address questions to the Committee of Ministers (Rule 59)
- right to be a committee member (Rule 44)
- right to be appointed rapporteur (Rule 50)

<sup>9</sup> Furthermore, the Committee on Rules of Procedure – to which any challenge of credentials must be referred for report or for opinion – may interpret Rule 10.1 of the Rules of Procedure and determine the scope of sanctions applicable to national delegation members whose credentials have been challenged.

<sup>10</sup> Deprivation or suspension of the rights of participation or representation of Assembly members in the context of a challenge or reconsideration of the credentials of a delegation under Rules 7, 8 and 9 of the Assembly's Rules of Procedure - document AS/Pro (2014) 10 def).

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- right to request a debate under urgent procedure or a current affairs debate (Rules 51, 52 and 53)
- right to be a candidate for the office of President of the Assembly (Rule 15), chairperson or vice-chairperson of a committee or sub-committee (Rules 46 and 49)
- right to be a member of an ad hoc committee on observation of elections.

2/ *Representation rights* cover the institutional representation in the Assembly bodies, on the one hand, and that in Council of Europe bodies and external institutions, on the other:

- representation in the Assembly bodies: Presidential Committee, Bureau, Standing Committee (Rules 14 and 15)
- representation in the Joint Committee (Rule 56)
- representation as an *ex officio* member in Assembly committees (Rules 19.5 and 44.1)
- institutional representation of the Assembly (in Council of Europe bodies, by Bureau decision)
- representation of the Assembly on an occasional basis (by Bureau or committee decision) at events, meetings, conferences, organised by Council of Europe bodies, international organisations or interparliamentary assemblies.

### 3.4. *Elections by the Assembly and the right to vote of Assembly members - the 2018 opinion of the Committee on Rules of Procedure*

24. This 2014 opinion was supplemented by a second opinion of the committee, adopted on 10 December 2018,<sup>11</sup> at the request of the Bureau of the Assembly, which had instructed the committee to review the list of members' participation and representation rights which could be withdrawn or suspended when the Assembly takes a decision on a challenge to the credentials of a national delegation, "with respect to voting rights in the procedure for electing [senior officials] by the Assembly".

25. The right to vote was included in the 2014 opinion among the rights of participation of members that may be deprived or suspended by the Assembly (see paragraph 23). The committee was therefore asked to determine whether the right to vote in the procedures for elections by the Assembly of the highest officials of the Council of Europe can be excluded from the list of possible "sanctions".

26. The Assembly has the exclusive competence to elect the highest officials of the Council of Europe: judges of the European Court of Human Rights, the Commissioner for Human Rights, the Secretary General and Deputy Secretary General of the Council of Europe, the Secretary General of the Parliamentary Assembly. Various texts confer on the Assembly this competence: Article 36.b of the Statute of the Council of Europe, for the appointment of the Secretary General and Deputy Secretary General of the Council of Europe and Secretary General of the Parliamentary Assembly; Article 22 of the European Convention on Human Rights, for the election of judges; Article 9 of Resolution (99) 50 of the Committee of Ministers, for the election of the Commissioner for Human Rights.

27. It should be noted that the above-mentioned texts establish the competence of the Assembly, as a statutory organ, to elect these senior officials. They do not confer on parliamentary delegations or members of the Assembly – individually – the right to participate in the election of the highest officials of the Organisation. This responsibility is attached to an organ of the Council of Europe – the Parliamentary Assembly – which exercises it through its members.

28. The Assembly's Rules of Procedure, for their part and by specific procedures, organise the election of these senior officials and the participation of members of the Assembly in these elections.<sup>12</sup> Only the Assembly's Rules of Procedure (Rule 40.11, Rule 41.b, procedure for elections by the Parliamentary Assembly) provide that it is the members of the Assembly who are called upon to vote and take part in the election of such senior officials. This explains why the right to participate in such elections, because it is part of the individual voting rights of Assembly members, was included among the rights whose suspension or withdrawal could be considered pursuant to Rule 10.1.c.<sup>13</sup>

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<sup>11</sup> List of rights of participation and representation whose exercise may be deprived or suspended in the context of a challenge of credentials under Rule 10.1.c with respect to voting rights in the procedure for electing [senior officials] by the Assembly (document AS/Pro (2018) 20 def).

<sup>12</sup> See in particular the procedure for elections by the Parliamentary Assembly adopted by the Bureau of the Assembly on 5 September 2016, ratified by the Assembly on 10 October 2016 - Assembly Rules, pages 160 et seq.

<sup>13</sup> In this regard, it should be recalled that the right to vote in the Assembly is an individual one (Rule 43 of the Assembly's Rules of Procedure) and that the members of the Assembly "exercise their mandate freely and independently" and "members express their opinions freely, whether through their statements, speeches or votes, in all their activities in the Assembly and its various bodies"(Resolution 2126 (2016) on the nature of the mandate of members

29. In its 2018 opinion, the committee found that a change of approach was required because of the need to enhance the consistency of rules applying to the Committee of Ministers and the Parliamentary Assembly regarding the representation and participation of member states in the two statutory organs. The committee observed that, in accordance with the principle of the hierarchy of legal norms, even though there was nothing in the Rules of Procedure which contradicted either the Statute or the European Convention on Human Rights, the application or interpretation of the Rules must not run counter to the letter or spirit of the provisions in the Statute or the Convention.

30. The committee therefore concluded that the Assembly was not competent to interfere with the application of the Statute of the Council of Europe or the European Convention on Human Rights and that, accordingly, when deciding on the deprivation or suspension of certain rights of representation or participation in the activities of the Assembly and its bodies (Rule 10.1 c. of the Rules of Procedure), the Assembly could not breach the rights of its members to take part in the election of judges to the European Court of Human Rights, the Commissioner for Human Rights, the Secretary General and the Deputy Secretary General of the Council of Europe, and the Secretary General of the Parliamentary Assembly.

#### **4. Suspension or deprivation of some rights of representation or participation – the committee’s proposal**

31. In the (initial) report which it presented to the Assembly at the October 2018 part-session on “Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting”, the committee, with this specific legal and regulatory framework in mind, had called on the Assembly to decide that the deprivation or suspension “of certain rights of participation or representation in the activities of the Assembly and its bodies, as set out in Rule 10.1.c. of the Rules of Procedure, does not affect the rights of Assembly members to take part in the election of judges to the European Court of Human Rights, the Commissioner for Human Rights, the Secretary General and Deputy Secretary General of the Council of Europe and the Secretary General of the Parliamentary Assembly” (paragraph 9 of the draft resolution).<sup>14</sup>

32. The explanatory memorandum to this report underlines the point that “*While the Assembly’s electoral competence derives in fact from texts of differing legal value (from the Statute of the Council of Europe for the Secretary General and Deputy Secretary General of the Council of Europe and the Secretary General of the Parliamentary Assembly, from the European Convention on Human Rights for the election of judges, and from a Committee of Ministers resolution for the Commissioner for Human Rights), the fact that the procedures for selecting and electing candidates fall within a remit that is exercised jointly (or at least shared) with the Committee of Ministers should prompt the Assembly to exclude the right to elect these figures from the scope of participation rights that could be suspended.*”

33. In its previous discussions, the committee had concluded that it was not necessary to formally introduce a catalogue of “sanctions” into the Rules of Procedure. By the committee’s own admission, the list of members’ rights of representation and participation in the activities of the Assembly and its bodies that could be suspended or withdrawn following a challenge to credentials cannot be exhaustive. Nevertheless, the committee could, in the draft resolution, set out the principle that the Assembly cannot introduce any additional sanctions to those mentioned in this 2014 opinion, as supplemented by the 2018 opinion.

34. However, since then the Committee of Ministers adopted, at its 129th Ministerial session, a Decision referred to above, stipulating in particular that the member States of the Council of Europe are “entitled to participate on an equal basis in the two statutory organs of the Council of Europe”. This decision supports the Assembly’s own approach in Resolution 2277 (2019), where it decided that “Council of Europe membership implies an obligation of all member States to participate in both statutory organs” (see paragraphs 10 and 11 above).

35. In order to ensure the coherence of the Organisation’s internal legal framework, the Assembly, in its decisions, should continue to comply with the Statute of the Council of Europe and to take into due consideration relevant decisions taken by the Committee of Ministers. Therefore, taking into account the

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of the Parliamentary Assembly).

<sup>14</sup> In this report, it was also clearly pointed out that “*only Assembly members may participate in such elections: this would mean that the delegation members who were deprived of some of their rights of participation and representation as a result of a formal decision of the Assembly, including their voting rights, could participate in the election of the aforementioned figures. On the other hand, any parliament not having had its credentials ratified by the Assembly or, by its own choice, not represented in the Assembly by a delegation, has no claim to participation in these elections.*”

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Committee of Ministers' Decision on "A shared responsibility for democratic security in Europe – Ensuring respect for rights and obligations, principles, standards and values" and in order to ensure that the member States' right and obligation to be represented and to participate in both statutory bodies of the Council of Europe are respected, the committee could decide to propose to Assembly to include in its Rules of Procedure a formal stipulation in Rule 10.1 that the members' rights to vote, to speak and to be represented in the Assembly and its bodies shall not be suspended or withdrawn in the context of a challenge to or reconsideration of credentials.

36. I should like to note that the above proposal reflects a number of contributions made within the framework of the reflections of the Ad Hoc Committee of the Bureau (paragraph 2) pointing out that the Assembly is a common area for dialogue between parliamentarians from the Council of Europe's member States, and that the Assembly could only remain a forum for open and constructive dialogue by guaranteeing that all representatives have equal rights as regards participation in meetings, the right to speak and the right to vote.

37. In the light of the above considerations and in order to take into account the Assembly's own decisions as well as the Helsinki decision of the Committee of Ministers, I would like to ask the committee to support the introduction of this option in the proposed draft resolution.

## **5. Introducing a procedure for challenging the credentials of individual members**

38. The question of challenging the credentials not of a delegation as a whole but of one or more individual members, was again recently raised at the meetings of the Committee on Rules of Procedure.

39. The Committee has had occasion in recent years to discuss the expediency of amending the Rules of Procedure regarding follow-up to a request to challenge the still unratified credentials, on formal grounds, of Assembly members, taken individually, in the context of Rule 7, and more specifically with a view to sanctioning the actions or words of members seriously and persistently violating the principles and values upheld by the Council of Europe.<sup>15</sup>

40. When dealing with a challenge to credentials made in January 2013,<sup>16</sup> the Committee on Rules of Procedure pointed out the limits of the current Rules of Procedure, since, in practice, only the refusal of a member to sign a solemn statement would result in a challenge to his or her credentials on an individual basis.<sup>17</sup> The Committee held 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".

41. The Committee on Rules of Procedure had previously examined the question of challenging the credentials of individual members in a 2005 report, analysing in detail the arguments both for and against the introduction of a procedure with a view to preventing members of national parliaments who have expressly identified themselves with the activities and programmes of parties opposing the values of the Council of Europe from becoming Assembly representatives and substitutes<sup>18</sup>.

42. In Resolution 1443 (2005), the Assembly held that "if new Rules of Procedure were introduced allowing (...) to challenge credentials of individual members of national parliaments who are accused of

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<sup>15</sup> The question was looked at in detail by the Rules Committee in its report on Evaluation of the implementation of the reform of the Parliamentary Assembly, Doc. 13528 of 6 June 2014 (Rapporteur: Ms Liliana Palihovici, Republic of Moldova, EPP/CD).

<sup>16</sup> See the opinion to the President of the Parliamentary Assembly adopted by the Rules Committee on 22 January 2013 (doc. AS/Pro (2013) 03 def), following the challenge of the credentials of Mr Gaudi Nagy and Ms Zaroulia by Ms Nierenstein.

<sup>17</sup> Rule 7.1 of the Rules of Procedure provides for only three formal grounds as the basis for such a challenge: failure to comply with one or more of the relevant provisions of the Statute, relating to formal obligations (Rule 7.1.a.), failure to respect the principles for the composition of delegations regarding fair political representation and representation of the sexes (Rule 7.1.b.), and the absence of a solemn statement (Rule 7.1.c.).

<sup>18</sup> See Resolution 1443 (2005) and the report by the Committee on Rules of Procedure and Immunities on challenging credentials of individual members of a national delegation to the Parliamentary Assembly on substantive grounds (Doc. 10494). See also Resolution 1370 (2004) on the contested credentials of the parliamentary delegation of Serbia and Montenegro, in which the Assembly said it considered it inappropriate not to ratify the credentials of the whole delegation for reasons concerning individual members, since such a decision would penalise all the members of the delegation and the parties represented. The Assembly regretted the fact that the Rules did not allow for challenging the credentials of individual members of a national delegation on substantive grounds, such as a serious violation of the Council of Europe's basic principles by one or more members of a delegation.

activities or statements persistently violating the basic principles of the Council of Europe, there would be a danger of abuse. The Assembly cannot have an interest in becoming the forum for political infighting. (...)". It then decided to insert into its Rules of Procedure a provision stating that the credentials of members of a national delegation can be accepted only after each of them has signed a solemn statement affirming that they subscribe to the aims and basic principles of the Council of Europe (Resolution 1503 (2006) added Rule 6.2.b. to this effect).

43. In 2005-2006, the Committee on Rules of Procedure considered that a challenge to credentials in an individual capacity, on political grounds, could entail a risk of misuse for the pursuit of political battles, whether internal – between political parties represented in the national parliament, and even for settling personal scores – or at the level of the Assembly, by opening up the possibility of pursuing at a procedural level political controversies (between political groups or representatives of different delegations, and so on); the Committee considered that "the Assembly cannot have an interest in becoming the forum for political infighting".

44. The Committee on Rules of Procedure may wish to once again examine the possibility of amending the Rules of Procedure in order to introduce a procedure for challenging the credentials of representatives and substitutes on an individual basis.<sup>19</sup> However, it should be recalled that the code of conduct for members of the Parliamentary Assembly and its sanctions mechanism are applicable to members whose conduct, actions or statements breach their obligations in this respect (paragraph 7 of the code).

## **6. Temporary derogation from the application of certain provisions of the Rules of Procedure**

45. If the Assembly wishes to take into account the decision of the Committee of Ministers in Helsinki, as well as the exceptional context which led to it, it should then invite the parliaments of Council of Europe member States which are not represented by a delegation to the Assembly to present the credentials of their representatives and substitutes during the Assembly's June 2019 part-session. To this end, taking into account the provisions of the Statute of the Council of Europe and its own Rules of Procedure, which stipulate that the credentials of national parliamentary delegations must be transmitted before the opening of the Ordinary Session for ratification, the Assembly must decide to derogate from the application of certain rules: Rules 6.1 (last sentence) and 6.3, relating to the transmission of credentials of national delegations to the President of the Assembly and their ratification by the Assembly, and Rule 11.3 on the appointments following parliamentary elections.

46. In the past, the Assembly has taken such ad hoc decisions, which departed from its Rules of Procedure, in exceptional political circumstances. This was the case with Greece's reintegration into the Council of Europe in November 1974: after seven years of absence from the Assembly (since April 1967), following the military coup and the establishment of the Regime of the Colonels, and on the basis of the opinion adopted by the Assembly at the request of the Committee of Ministers (Opinion 69 (1974)), the Assembly ratified the credentials of a new Greek delegation in January 1975 (at the 3rd part-session). The same was true for Turkey, whose delegation was suspended in May 1981 and returned in January 1984 (during the 3rd part-session). In a very different context, the Assembly had on many occasions derogated from the conditions for the presentation of credentials at the opening of its Ordinary Session, in order to integrate as soon as possible the parliamentary delegations of new member States.<sup>20</sup>

## **Conclusions**

47. The Committee on Rules of Procedure is invited to consider the issues raised in the present report and give thought to whether:

- inviting the parliaments of Council of Europe member States which are not represented by a delegation to the Assembly to present the credentials of their representatives and substitutes at the June 2019 part-session of the Assembly, by way of derogation from Rules 6.1 (last sentence) and 6.3 of the Rules of Procedure, relating to the transmission of credentials of national delegations to the President of the

<sup>19</sup> At its meeting on 15 May 2014, the Committee on Rules of Procedure decided by a small majority not to propose the introduction of such a procedure.

<sup>20</sup> For example, the Portuguese delegation, whose country joined the Council of Europe in September 1976, presented its first credentials at the 3rd part-session of the Assembly in January 1977; Spain, a member State since October 1977, presented the credentials of its first delegation at the 3rd part-session of the Assembly in January 1978; Liechtenstein, a member State since November 1978, presented the credentials of its first delegation at the 3rd part-session of the Assembly in January 1979. The Russian Federation, which became a member State in February 1996, presented the credentials of its first delegation at the 2nd part-session of the Assembly in April 1996.

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Assembly and their ratification by the Assembly, and Rule 11.3 on the appointments following parliamentary elections;

- Rule 10 of the Rules of Procedure should be amended, so as to clarify the scope of sanctions to be applied to members of delegations whose credentials have been ratified but whose exercise of certain rights of participation or representation in the Assembly's activities has been suspended or withdrawn;
- a procedure for challenging the credentials of individual members should be introduced.