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## **Committee on Rules of Procedure, Immunities and Institutional Affairs**

# **Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly: assessment of the follow-up given by the committee to the conclusions and recommendations**

## **Progress report for the attention of the Bureau of the Assembly<sup>1</sup>**

prepared by the Chairperson of the committee

1. On 26 April 2018, the Parliamentary Assembly adopted Resolution 2216 (2018) "Follow-up to the report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly". The Resolution was adopted on the basis of a report by the Committee on Rules of Procedure (Doc 14540), following the publication, on 22 April 2018, of the report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly (IBAC). Alongside its conclusions related to individual cases, the IBAC has drawn up a number of recommendations to the Assembly concerning the overall functioning of the Assembly, the decision-making process and the ethical framework. Relevant extracts from the IBAC report are included in the Appendix to this memorandum.

2. The Resolution instructed the Committee on Rules of Procedure to follow up on the IBAC report on two issues. Firstly, the committee was instructed to consider the IBAC's recommendations and conclusions concerning the individual conduct of members or former members (paragraph 14.4), by implementing "as soon as possible, the procedure provided for in paragraph 20 and the following paragraphs of the Code of conduct for members of the Parliamentary Assembly in respect of the members mentioned in the report". Secondly, the committee was instructed to analyse the IBAC's general recommendations and conclusions and "to implement the changes that must be made to the Rules of Procedure and to the integrity framework of the Assembly, bearing in mind the need for transparency and accountability".

### **1. Follow-up to the IBAC recommendations and conclusions concerning the individual behaviour of members or former members – actions taken**

3. In the practical implementation of the procedure provided for in the Code of conduct for Assembly members, on 24 April 2018, the committee immediately took the necessary decisions:

– it agreed its framework for action, carefully defining the categories of persons whose cases should be examined - taking into account the three categories of cases listed in the report - namely acts of corruption, cases of violation of certain provisions of the Code of conduct for members of the Assembly or the Assembly's Code of conduct for rapporteurs, and, lastly, refusals to co-operate with the IBAC;

– it has supplemented and reinforced the procedural guarantees provided for in paragraph 21 of the Code of conduct by a rigorous specific framework for the attention of the persons heard by the committee (meeting strictly in camera and absolute respect for confidentiality);

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<sup>1</sup> Approved unanimously by the Committee on 26 June 2019

– the committee has defined the timetable of its actions; it decided to conduct a series of hearings, convening the members of the Assembly mentioned in the report, and for the first of them, decided to invite those members who held important positions in the Assembly;

– and, lastly, it has closely followed the framework set by the Code of conduct in determining the existence of a minor breach of the Code (paragraph 24) or serious or repeated breaches of the Code (paragraph 25) which led to the imposition of sanctions (paragraph 27).

4. Between April and October 2018, the Committee on Rules of Procedure held five meetings, including four hearings, at which it considered the cases of eight members and 17 former members of the Assembly mentioned in the IBAC report:

– At the first hearing, on 25 April 2018, the committee heard the following members: Mr Tiny Kox, Ms Ria Oomen-Ruijten, Mr Stefan Schennach, Mr Samad Seyidov, and it took decisions on the first three cases.

– At its second hearing, on 15 May 2018, the committee heard the following members: Mr Pedro Agramunt, Mr Cezar Florin Preda and Mr Jordi Xuclà, and took decisions on these cases as well as on the case of Mr Samad Seyidov, heard on 25 April 2018.

– At its meeting of 26 and 27 June 2018, the committee examined the cases of fifteen former members of the Assembly mentioned in the IBAC report: MM Agustín Conde, Alain Destexhe, Stef Goris, Andreas Gross, Ms Gultakin Hajibayli, MM Tadeusz Iwiński, Zmago Jelinčič Plemeniti, Jaakko Laakso, Göran Lindblad, Eduard Lintner, Muslum Mammadov, Ms Karin Strenz, MM Elkhan Suleymanov, Luca Volontè and Ms Karin Woldseth.

– At a fourth meeting, on 4 September 2018, the committee considered a sixteenth case of former members of the Assembly, that of Mr Michael Hancock, and reconsidered the decision made in respect of Ms Hajibayli at its meeting of 27 June.

– Finally, the committee held a fifth meeting on 11 October 2018 to consider the latest cases mentioned in the IBAC report, namely that of Mr Ondřej Benešik, member of the Assembly, and Mr Robert Walter, former member of the Assembly, both heard by the committee.

5. The decisions in individual cases were made public immediately after the adoption and published on a special page on the Assembly website which brings together all relevant documents related to the transparency framework of the Assembly and the final report of the IBAC.

6. Moreover, the IBAC report was sent by the President of the Assembly, on 23 April 2018, to all the Speakers of Parliament of the member States, stating that while this report "does not disclose widespread practices of corruption in the Assembly, it does reveal a number of cases which breach the Assembly's Code of conduct and gives rise to suspicions of corrupt activities". The President asked them to take action "where appropriate" so that these cases are brought to "the attention of national authorities under their domestic legislation". In a letter of 7 May 2018, the President of the Assembly reminded the Speakers of Parliaments of the content of his previous letter and transmitted Resolution 2216 (2018) asking them to provide feedback "by the end of 2018, on any measures taken by your parliament or national delegation" pursuant to paragraph 14.3 of the Resolution.<sup>2</sup>

7. The 26 replies<sup>3</sup> received to this letter have been made available, on a regular basis, to the committee which may draw conclusions therefrom. Some of the parliaments reported not being able to initiate an internal procedure against members referred to in the IBAC report given that those members had already left the national parliaments. In two cases investigations have been initiated at the level of the parliaments and one of them has led to sanctions under the Code of conduct of the parliament concerned. A criminal investigation has been conducted in one case. At a more general level, some of the parliaments described their transparency framework, often based on the declaration of assets and interests, and the existing anti-corruption legal framework. Two parliaments reported having reviewed the way they prepared their members for inter-parliamentary work.

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<sup>2</sup> The Assembly "invites the national parliaments of member States, and their national delegations to the Parliamentary Assembly, as well as the national governments, to examine the IBAC report and to take the necessary measures in respect of the cases mentioned, which require their full attention, and report back to the Assembly by the end of 2018."

<sup>3</sup> Austria, Belgium (2), Cyprus, Croatia, Finland, France, Germany (3), Hungary, Ireland, Liechtenstein, Lithuania, Malta, Netherlands, Norway, Romania, San Marino, Slovenia (2), Sweden, Switzerland, Turkey, Ukraine, United Kingdom.

## 2. Assessment of the procedure conducted in regard to individual cases

### 2.1. Comments on the procedure conducted by the IBAC

8. During the committee hearings and meetings, members of the committee made a number of comments, in particular:

- members regretted that they had not had access to the information or archives that the IBAC held, which would have better informed their decision;
- they noted from the IBAC report that the anonymity of the witnesses received by the IBAC had not always been preserved;
- they also raised the problem of the lack of follow-up given by the IBAC to its letters of convocation or requests for co-operation sent to Assembly members or former members, and, on this point, the absence of evidence given to the committee that the letters sent by the IBAC, deemed to have been sent by registered letter or by email, had actually been received by their recipients;
- some members noted the lack of treatment of certain information brought to the IBAC's attention during its investigation (e.g. some individuals heard by the IBAC reported that some allegations and information they had shared with the IBAC were not reported in its final report);
- lastly, in determining offenses committed by members or former members of the Assembly to the Assembly's ethical standards, the IBAC considered that, in addition to the rules of conduct (paragraphs 7 to 16 of the Code of conduct for members of the Assembly), infringements of general principles of behaviour (paragraph 5) could also be directly invoked and lead to sanctions.

### 2.2. Comments on the procedure conducted by the Committee on Rules of Procedure

9. In considering the cases of Assembly current members referred to in the IBAC report, the committee chose to convene and hear them directly so that they could present their observations in person. With regard to former members of the Assembly, the committee adopted a "lighter" procedure, namely that these former members were informed of the possibility of being heard by the committee, at their request, or of transmitting their written comments. This procedure derogates from the procedure requiring attendance in person laid down in the Code of conduct. While it enabled the committee to fulfil its task more quickly, this did not mean that it was not at the expense of rigorous examination of these cases. In this respect, the committee did not hesitate to reconsider the case of Ms Hajibayli, considering that the objection she had made to the decision on her case was serious and well-founded, and to modify its original decision.

10. During the numerous meetings it held, the committee sometimes encountered time constraints: it was not possible to interview a member concerned and to deliberate on his or her case at the same meeting. The committee has found it important that, in order to efficiently grant adversarial proceedings, only those committee members who interviewed the person concerned, would be entitled to take part in the deliberation concerning the outcome of the case.

11. With regard to the sanction system, the committee considered that its limited effectiveness, in particular with regard to former members, was a matter of concern. Indeed, the sanctions to which former members are exposed are very limited (withdrawal of honorary membership of the Assembly, prohibition of access to Council of Europe premises during the activities of the Assembly and committees). These sanctions are not expressly referred to in paragraph 27 of the Code of conduct and arise from specific complementary texts.

12. Similarly, in some cases, sanctions against members may be ineffective. For example, in the case of Mr Pedro Agramunt, the committee considered his case and introduced sanctions while he was a member of the Assembly (deprivation of some participation and representation rights in accordance with paragraph 27 of the Code of conduct). Two months later he resigned from the Assembly and became a former member. This resulted in the situation where sanctions imposed were not relevant anymore, while sanctions applicable to former members could not be imposed given that he has not been sanctioned in that capacity. Consequently, he may still have, theoretically, free access to Council of Europe premises.

13. It would therefore be desirable to review the sanction mechanism and in particular to harmonise it in order to take into account any changes in the situation and mandate of Assembly members.

### 3. Follow-up to the IBAC recommendations and general conclusions – steps taken

14. On the basis of the findings and observations made during its investigation, the IBAC has drawn up a number of recommendations to the Assembly concerning the overall functioning of the Assembly, the decision-making process and the ethical framework.

#### 3.1. Changes made to the PACE ethical framework since the publication of the IBAC report

15. The Assembly has taken concerted steps to make its ethical framework fully operational, including by taking account of the recommendations provided by the IBAC and also by the Council of Europe's Group of States against Corruption (GRECO), which carried out a thorough review of the Assembly's integrity framework and the set of rules and mechanisms governing the conduct of the members of the Assembly.<sup>4</sup>

##### 3.1.1. Monitoring of conflict of interests and declaration of gifts (§§ 754, 757)

16. In October 2017, the Assembly adopted Resolution 2182 (2017) on "Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members". The Resolution introduced, as from 2018, a system of annual declarations of interests for the Assembly members requiring the annual registration of, inter alia, all their activities, income, participation in associations and friendship groups, gifts and trips which could be considered as being relevant to members' work as Assembly members. It has provided a solid basis for identifying any actual or potential conflicts of interest for members of election observation missions, rapporteurs and general rapporteurs in line with recommendations made by GRECO (subsequently made also by the IBAC, §757 iv). The current system has replaced the system of declaration of gifts in place prior to 2018 which was not widely used. Grouping the declarations of all relevant interests in one form responded to the IBAC call for more "transparency in the receipt of gifts or benefits of any nature" (§ 754).

17. The declarations as well as their updates could be consulted on each member profile on the PACE website. In addition, the list of members who did not submit their declaration of interests for 2019 is published on the PACE website. Those members are automatically deprived of the right to be appointed rapporteur or to act as committee rapporteur, or to be a member of an ad hoc election observation committee (see paragraph 24 below).

18. At its meeting held on 10 December 2018, the Committee on Rules of Procedure considered the issues of scrutiny of declarations. While recognising the scrutiny as a cornerstone of the declaration system the committee agreed that due to various logistic and financial reasons the only monitoring tools could be public scrutiny or a peer review.

19. To compensate the lack of systematic monitoring the Code of conduct provides a sound procedure enabling to examine an allegation of conflict of interest or of an improper declaration either at the request of the President of the Assembly or at least 20 members of the Assembly representing at least 5 national delegations or at a motion of the Committee on Rules of Procedure itself.

20. The Committee on Rules of Procedure is the only committee entitled according to the Code of conduct to analyse an alleged breach in relation to the duty of declaration of interests. An alleged conflict of interest of a rapporteur is analysed by a committee concerned according to the Code of conduct of rapporteurs of the Parliamentary Assembly which is *lex specialis*. Concerning a potential conflict of interest of rapporteurs, the current practice enables a committee concerned to consider the case at a motivated request of only one PACE member.

21. Therefore, the existing procedure addresses concerns expressed by the IBAC with regard to the monitoring of the absence of any conflict of interest in case of rapporteur (§757 v).

##### 3.1.2. Completing and strengthening the sanction system (§757 ii)

22. On the basis of the GRECO evaluation report, the IBAC asked to provide more clarity with regard to the definition of the sanctions that may be applied for breaches of the Code of conduct, "in particular by clarifying the meaning of the concept of "minor violation" and "serious breach" of the Code of conduct".

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<sup>4</sup> Evaluation report entitled "Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe", adopted by GRECO on 19 June 2017 <https://rm.coe.int/evaluation-de-la-deontologie-des-membres-de-l-assemblee-parlementaire-/1680728009>

23. The system of sanctions, as an important component of a successful integrity framework, was already introduced in the first version of the Code of conduct adopted in 2012, alongside the investigation procedure. The entire mechanism, including the sanction decision and its choice, was the sole responsibility of the President of the Assembly. On the occasion of the subsequent revision of the Code of conduct the sanctions system was defined in more details. Resolution 2182 (2017) on “Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members” reviewed the oversight procedure, including the list of sanctions. Amendments introduced to the Code of conduct established differentiation between a minor violation (paragraph 24) and a serious breach (paragraph 25). At the basis of this distinction is the level of the damage caused to the Assembly as institution, including by misusing the membership in the Assembly for personal profit. A minor violation is understood as negligent violation, when a person acted in good faith, and which could be easily rectified. A serious breach would implied deliberate violation or negligent violations committed on numerous occasions. Therefore, it would be difficult to assign in advance the violation of which existing Rule would trigger qualification of a minor violation or a serious breach. Each qualification has to be done having regard to the circumstances of the case.

24. It should be also noted that, in addition to the cases of Assembly members or former members mentioned in the IBAC report (see paragraph 4), the sanctions system has been clarified - and implemented - in 2018 with regard to sanctions against members who failed to submit a declaration, refused to make one, failed to disclose a relevant interest or made an untruthful declaration (i.e. deprivation of the right to be appointed rapporteur or to act as committee rapporteur, or to be a member of an ad hoc election observation committee)<sup>5</sup> will apply in 2019 to comparable cases.

### 3.1.3. Voting in plenary and committees (§§ 747, 757 vii, vii)

25. The IBAC has expressed concern about the eventual falsification of the voting count in the committees. In particular, it has been stressed that the difficulties were “created by the presence of different persons in committee meetings during the counting of votes”: “When the vote is narrowly split, and the committee room is particularly full, the accuracy of the voting count may be affected, and the risk of improper lobbying activities increased” (paragraphs 572 and 573). In addition, it has asked that “any attempt to falsify a vote be investigated and met with the appropriate sanctions”.

26. To respond to this concern, to smoothen the running of the committee meetings and to help the identification of the lobbying activities within the Assembly premises, new rules on access to and movement and security within the Council of Europe during sessions of the Parliamentary Assembly and meetings of Assembly committees and sub-committees were adopted by the Assembly on 21 January 2019. The document reiterates that as a general rule (Rule 48.3 of the Rules of Procedure), the committee meetings have to be held in private. It also provides the list of people who could be authorised to attend a meeting. A committee could still decide to open part of the meeting or a specific item to the public (i.e. a hearing). Furthermore, during Assembly sessions, a limit on the authorised number of guests that a member of the Assembly may invite has been introduced; the badges delivered enable to differentiate in which capacity a person may access certain areas or places of work in the premises of the Council of Europe.<sup>6</sup>

27. The IBAC has also invited the Assembly to take concrete steps to grant free and independent vote by Assembly members and avoid pressure from governments. It should be noted that Article 14 of the General Agreement on Privileges and Immunities grants members an absolute immunity from persecution in relation to opinion expressed or vote cast in the exercise of their functions as Assembly members. In addition, current rules, which do not allow the removal from a delegation during the parliamentary year of a member whose credentials have been ratified unless the member resigned, have been designed, *inter alia*, with the aim of protecting members’ freedom of actions. Naturally, a rule could be circumvented. For instance, an “undesired” member could be replaced on the delegation at the opening of the next session or prevented from travelling to Strasbourg by his/her national parliament. However, situations of this type raise concerns about the overall functioning of democracy in the country concerned and could hardly be addressed by merely revising the Assembly’s procedural framework.<sup>7</sup>

<sup>5</sup> Decision taken by the Committee on Rules of Procedure at its meeting on 24 January 2018, endorsed by the Bureau of the Assembly on 15 March 2018.

<sup>6</sup> On 15 January 2019, the Committee on Rules of Procedure decided, after careful consideration of the issue at a number of meetings, not to recommend at this stage the establishing of a transparency register of interest representatives. The Bureau of the Assembly was informed accordingly.

<sup>7</sup> See the report of the Committee on Rules of Procedure, Immunities and Institutional Affairs on “The nature of the mandate of members of the Parliamentary Assembly” (Doc. 14077) and Resolution 2126 (2016).

28. Finally, an attempt to falsify a vote could already be investigated under paragraph 7 of the Code of conduct. The committee could consider whether a specific provision should be added to the Code of conduct.

*3.1.4. Harmonisation of the existing rules (§757 ii)*

29. The above-mentioned Resolution 2182 (2017) harmonised the wording of similar provisions in existing texts.

*3.2. On the practical functioning of election observation missions (§§ 751, 753, 757 x)*

30. The IBAC recommendations has triggered a number of modifications to the Guidelines for the observation of elections by the Parliamentary Assembly.<sup>8</sup>

*3.2.1. Rules and procedures on the conduct of members in the context of election observations missions (§ 757 x)*

31. The provisions on the conduct and practical organisation of election observation (chapter F) have been clarified, in particular with regard to the conduct of the mission, interaction with national authorities, the role of members in the election observation process, communication and relations with the media. The same applies to the provisions relating to election observation reports and statements (chapter G).

32. The content of the declaration of interests' form of candidates for election observation missions has been modified to include additional sections (membership of friendship groups; occasional activities, mandates or missions related to the country concerned; non-official missions conducted in the last ten years for the purpose of observing elections or in connection with elections in the country concerned).

33. The issue of gifts and other benefits and hospitality, which any candidate for an observation mission must declare in this specific declaration, has also been addressed under the new declaration of interests' system (see Chapter 3.1.1. above).

*3.2.2. New modalities for co-operation with the International Election Observations Mission (IEOM) and the OSCE/ODHIR (§751)*

34. The IBAC considers that "in order to avoid appearances of bias and to strengthen the authority of PACE's election observation missions, PACE should in principle refrain from deploying an election observation mission if ODIHR decide for valid reasons not to deploy their own. For the same reasons, the heads of the PACE election observation missions should use every endeavour to reach a common position with ODIHR and the other members of the IEOM in any statements made on the observation of elections."

35. The new wording of paragraphs 26 and 27 now invites the Assembly to abstain from sending its own mission if the OSCE/ODHIR long term observation mission is prevented from being deployed. Moreover, a closer and regular co-operation among Heads of the IEOM's delegations is required to make sure, in so far as possible, that assessments of the elections do not differ. Also, new article 42 specifies how the production of the preliminary statements and final reports is made if the Assembly's usual partner organisations in IEOMs do not deploy an observation mission.

*3.2.3. Preventing participation of members and former members of PACE in election observation missions deployed by other organisations (§753)*

36. In addition to the obligation for candidates for election observation missions to declare election observation missions carried out outside an IEOM within the past ten years (paragraph 32), members of the Assembly's ad hoc committees are now required to observe the provisions of the new Code of Conduct for International Election Observation Missions, appended to the Guidelines, which apply uniformly to all IEOM members.

#### **4. Follow-up to the IBAC recommendations and general conclusions – work in progress**

37. With regard to some other issues, reflection on the consideration of the IBAC's recommendations and the possible revision of the rules and procedures in force is still ongoing.

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<sup>8</sup> The Guidelines were revised by the Bureau of the Assembly on 31 May 2018.  
<http://website-pace.net/documents/10643/436801/GuidelinesElectionObservation-EN.pdf/81adc9f1-f750-4336-9a24-952da2f87506>

#### 4.1. Consolidation of the complaint mechanism (757 ii, vii)

38. When dealing with the IBAC report, the Committee on Rules of Procedure has demonstrated its ability to implement the procedure provided for in the Code of Conduct for Members of the Assembly in considering allegations of violations of the Code and sanctioning them. However, the committee relied entirely on the investigative work and conclusions done by the IBAC. It did not conduct any investigation itself. Therefore, following the IBAC's conclusions, the committee decided to assess whether the current procedure framework is fully operational to deal with allegations of violations of the Code of conduct and new requests for investigations that may arise in future.

##### 4.1.1. General framework

39. Under the current mechanism, the implementation of the Code of conduct is the responsibility of the President of the Assembly and the Committee on Rules of Procedure (paragraph 18). The President of the Assembly may rule on minor breaches if the matter is not referred to the Committee on Rules of Procedure (paragraph 19). The Committee on Rules of Procedure shall examine alleged breaches of the code of conduct brought to its attention by the President of the Assembly, or by at least 20 members of the Assembly representing at least 5 national delegations. The commission may also start an investigation of its own motion (paragraph 20). Consequently, the President of the Assembly and the Committee on Rules of Procedure each have the competence to open an investigation following a complaint from an individual or an organisation.

40. Paragraphs 21 to 27 of the Code of conduct provide more specific details on the committee's inquiry procedure and decision-making mechanism. This procedure has already been implemented during the examination of the cases mentioned in paragraph 4 of this report. The committee then found the overall existing framework to be comprehensive, with the exception of a limited number of practical elements that needed to be addressed.

##### 4.1.2. Additional elements needing to be introduced

41. Even though the Code of conduct already outlines some steps in the observance procedure of the Code of conduct, further procedural issues may arise.

###### – *Threshold of 20 members representing 5 national delegations*

42. In practice, both the President of the Assembly and the Committee on Rules of Procedure have examined cases of alleged conflicts of interest or untrue declarations of interest referred to them at the request of one member of the Assembly only. It is therefore questionable whether it would not be useful to review the 20-member threshold generally required by the Code of conduct for an investigation to be launched, in order to bring the rules into line with the emerging practice.

###### – *Admissibility criteria for a complaint*

43. It will be recalled that the report on the Committee on Rules of Procedure on "Follow-up to Resolution 1903 (2012): promoting and strengthening transparency, accountability and integrity of Parliamentary Assembly members" (Doc. 14407) contains in its appendix a standard form for requesting an investigation under paragraph 17 of the Code of Conduct for Members of the Assembly. This form is intended for members of the Assembly only and includes, in addition to the names and capacities of the plaintiffs, the identity of the member against whom the allegations are made and the reasons for requesting an investigation (the statement of allegations relating to a member's non-compliance with his/her obligations under the code, the relevant provisions of the code, and the reasonable grounds underlying these allegations, including the list of relevant activities or facts).

44. However, currently, the code of conduct does not provide for admissibility criteria for complaints lodged by persons who are not members of the Assembly. The committee should consider introducing minimum requirements for a complaint to be accepted. Thus, anonymous complaints would not be accepted. A complaint should mention the complainant's personal details (unless a complainant requests that his or her personal data not be disclosed if he or she has reasonable grounds to do so). A complaint must contain sufficient evidence.

– *Ex officio investigation by the committee*

45. According to the Code of conduct, the Committee on Rules of Procedure could launch an investigation of its own motion. However, there is no formal mechanism of how the committee could launch an investigation. In the absence of the special procedure, the regular procedure in committees has to apply (i.e. the proposal to open an investigation has to be added to the agenda as a separate item at the initiative of the committee chairperson or at the request of a member, at the latest before the adoption of the agenda, followed by a debate and a vote).

– *Investigation tools and standards of proof*

46. Inquiries would be conducted on the basis of all documents received and available, by requesting written observations and interviewing the persons concerned and witnesses. Members under investigation are obliged to co-operate and respond to requests for clarification. This comes in addition to a possibility provided by the Code of Conduct to seek clarification and further information from the chairperson of the member's national delegation, the chairperson of the member's political group or the chairperson of the member's committee.

47. The hearing organised by the committee on 18 March 2019 on different aspects of the implementation of parliamentary codes of conducts (in the presence inter alia of the UK Parliamentary Commissioner for Standards in the House of Commons and a representative of the competent service of the European Parliament) made clear that there was a difference in degree of difficulties when processing a complaint regarding an alleged conflict of interests and an untrue declaration of interest. In the second case, the information can be easily accessible, available from the medias for example, and had to be compared to the member's declaration of interests. Conflicts of interest are more difficult to investigate because the investigation implies a delicate assessment of criteria related to honesty and integrity, sometimes on the basis of a body of evidence, or even simple allegations that the investigation must demonstrate.

48. Some Assembly committees have examined allegations of conflict of interests of rapporteurs (the Social, Health and Sustainable Development Committee, the Monitoring Committee, and ultimately the Committee on Political Affairs and Democracy) and have identified procedural patterns to be followed.

– *Other issues*

49. The Committee on Rules of Procedure is continuing to discuss aspects related to data protection and protection of whistle-blowers as well as an opportunity to have an internal appeal for decisions on the Code breaches.

*4.2. Transparency and sufficient regulation on appointments of members of the Monitoring Committee and the Committee on Rules of Procedure, and of rapporteurs in general (747, 757 iv)*

50. The appointment of members to the above-mentioned committees is the responsibility of the political groups, which nominate candidates, the Bureau, which appoints the members, and the Assembly, which ratifies the Bureau's decision (Rule 44 of the Rules of Procedure). There are therefore two possibilities to challenge the political groups' proposal: first in the Bureau and then upon ratification by the Assembly. Therefore, the appointment procedure already provides for a number of procedural safeguards. In practice, there have been a few cases where the Bureau asked the political groups to modify their nominations.

51. If the appointment procedure in the committees concerned is to be changed and more transparency introduced, this has to be done in close co-operation with the political groups and with their agreement, bearing in mind that some aspects are relevant to the internal functioning of the groups, and that they are better placed to assess the competence of their respective members for a given membership position.

*4.3. Addressing the issue of immunities (757, ii)*

52. A draft report by the Committee on Rules of Procedure is under preparation (discussions to be held in 2019 with a possible report submitted to the Assembly in early 2020).

## 5. Conclusions

53. For some members of the Assembly, but also some INGOs<sup>9</sup>, the IBAC report allows the Assembly to turn a page, but probably not to close the book.

54. In the short term, and taking into account the analytical elements contained in this report, the committee must consider changes to its regulatory and ethical framework. It may do so in the context of a new report on the "*Revision of the Code of Conduct for Members of the Parliamentary Assembly*".

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<sup>9</sup> In a letter of 28 June 2018 addressed to the President of the Parliamentary Assembly, Transparency International calls for the continuation of the work of the Independent Investigation Body on allegations of corruption, noting that the investigation also uncovered facts and allegations implicating eight further countries: Armenia, Kazakhstan, Macedonia, Monaco, Montenegro, Russia, Turkey and Ukraine. Accordingly, TI requests the Assembly to extend the IBAC mandate to continue their inquiry into the allegations against these countries.

## **Appendix - excerpts from the report of the Independent Investigation Body on allegations of corruption in the Parliamentary Assembly (IBAC)**

### **A. Summary of the principal conclusions concerning the general functioning of PACE**

747. In its above assessment of the general functioning of PACE, the principal conclusions of the Investigation Body are as follows:

- The key deficiency in the organisation of work and processes within PACE relates to the manner in which the decisions on appointments to different functions are made. This in particular concerns the lack of transparency and sufficient regulation of the procedures for such appointments (see paragraphs 557-559 above);
- Such lack of transparency and sufficient regulation of the procedures for appointments is a matter of particular concern in connection with the appointments of members of the Monitoring Committee and the Rules Committee, as well as the appointments of rapporteurs in general (see paragraphs 560-567 above);
- An issue of lack of transparency also arises with regard to the voting processes in the committees, which may affect the voting results and open the door to the possibility of the exertion of improper influence, including that of a financial nature (see paragraphs 568-573 above).

### **C. Summary of the principal conclusions on the practical functioning of election observation**

751. On the practical functioning of the PACE election observation missions, the Investigation Body has made the following findings:

- In order to avoid appearances of bias and to strengthen the authority of PACE's election observation missions, PACE should in principle refrain from deploying an election observation mission if ODIHR decide for valid reasons not to deploy their own;
- For the same reasons, the heads of the PACE election observation missions should use every endeavour to reach a common position with ODIHR and the other members of the IEOM in any statements made on the observation of elections (see paragraph 631 above).
- There appears to be confusion over the respective roles of MPs and staff members participating in election observation missions (see paragraph 661 above), which has had an effect on the orderly conduct of those missions and given rise to suspicions of wrongdoing. PACE should consider strengthening and clarifying the Guidelines.

753. With regard to the participation of members and former members of PACE in election observation missions outside of PACE, the Investigation Body notes that there is nothing in PACE's ethical standards to prevent members or former members of PACE from participating in election observation missions deployed by other organisations, be it OSCE-PA, ODIHR, PA-CIS, their respective national parliaments or NGOs, or other private organisations.

### **D. Summary of the principal conclusions on the exchange of gifts and different forms of benefits in the matters concerning Azerbaijan**

754. On the exchange of gifts and different forms of benefits in the matters concerning Azerbaijan, the Investigation Body has made the following findings:

- The Investigation Body has not found that the receipt of gifts and benefits has played a prominent role in the PACE activities concerning Azerbaijan or that it has been shown to have affected the requirements of neutrality in the work of the PACE MPs, in particular the rapporteurs (see paragraphs 678-682 above);
- Nevertheless, the Investigation Body notes with concern that only a few declarations of gifts have been made so far in PACE. There is a need for transparency in the receipt of gifts or benefits of any nature, as required under paragraph 14 of the PACE Code of Conduct, and in accordance with the procedure set out in PACE's new ethical framework (see paragraphs 683 and 685 above);
- The Investigation Body has also found unacceptable the suggestion that PACE MPs would not consider themselves to be bound by the rules on the declaration of gifts in PACE but only by those rules in their national parliaments. There is a need for diligent observance by MPs of the rules on declarations of gifts

and interests as envisaged under the relevant PACE ethical framework, and for effective mechanisms to monitor compliance with the rules (see paragraph 684 above).

## II. RECOMMENDATIONS FOR THE ASSEMBLY'S ETHICAL FRAMEWORK

757. In view of its findings and conclusions above, the Investigation Body makes the following recommendations on the measures to be implemented to rectify the identified shortcomings and fill the gaps in the Assembly's ethical framework:

- i. to take the necessary measures without delay to make the new ethical framework, introduced following GRECO's assessment of its 2015 ethical framework (see paragraphs 530-536 above), fully operational and effective, in particular in relation to the prevention of conflict of interest, the receipt of gifts, lobbying, the privileges and duties of honorary members, and the capacity to institute the relevant proceedings in the event of non-compliance with the ethical standards;
- ii. to consider implementing all the remaining recommendations made by GRECO which are not fully or partially covered by the new ethical framework. This in particular concerns the necessity to (i) further harmonise the various existing codes and guidelines on the conduct of PACE members; (ii) provide further clarity to the definition of the sanctions that may be applied for breaches of the Code of Conduct, in particular by clarifying the meaning of the concept of "minor violation" and "serious breach" of the Code of Conduct (paragraphs 7 and 8), as well as providing foreseeable and accessible guidance to the Rules Committee on when to publish its finding of a "minor violation" of the Code of Conduct by an MP on the Assembly's website (section 7) and when to apply a sanction for a "serious breach" of the Code of Conduct (section 8); (iii) complement the existing rules on immunity with a set of clear and objective criteria; and (iv) establish mechanisms for the receipt and processing of information on allegations of corruption and fraud;
- iii. to foster transparency in the work and decision-making processes of the leaders of the political groups, in particular by establishing mechanisms which will ensure that the decision-making processes on appointments in the Assembly's various committees and other bodies, notably in the Monitoring Committee and the Rules Committee, are transparent and sufficiently regulated;
- iv. to ensure that transparent and sufficiently regulated procedures for the appointment of rapporteurs are put in place. Moreover, it is necessary to ensure that the principles related to the concept of a conflict of interest are made clearer to the rapporteurs and that the duty to make the necessary declarations of the absence of any such conflict is emphasised;
- v. to ensure that a robust and consistent approach is applied to monitor the observance of the declarations by rapporteurs of the absence of any conflict of interest, both at the moment when the declaration is made and at any time during a rapporteur's term in office. In particular, procedures should be put in place to allow for arguable allegations of a conflict of interest on the part of a rapporteur, or other forms of inappropriate conduct or breaches of ethical standards, to be investigated and, where appropriate, sanctioned;
- vi. to consider introducing a fully transparent voting system in the committees, based on the one existing in the PACE plenary, subject to ensuring that adequate safeguards against abuse are put in place;
- vii. to put in place relevant procedures to allow for a clear identification of those who have the right to vote in a committee and to safeguard against deliberate attempts to falsify the vote. Any attempt to falsify a vote must be investigated and met with appropriate sanctions;
- viii. to take steps to ensure that improper pressure, including pressure from governments, is not brought to bear on the free and independent voting of MPs in pursuance of the aims and basic principles of the Council of Europe;
- ix. to put in place clear rules and procedures on the conduct of MPs in the context of missions undertaken on behalf of the Assembly and to ensure that those rules and procedures are made known to every MP taking part in such missions. These procedures should in particular regulate: (i) participation in meetings (including the reporting protocols for cases in which private meetings are held with the authorities); (ii) observance of the established programme of a visit; (iii) conduct in the context of an offer of hospitality by the local authorities; and (iv) the respective roles of the PACE secretariat and MPs in the mechanisms for reporting on

missions. Failure to comply with the procedures regulating appropriate conduct in the context of missions should be investigated and met with appropriate sanctions;

x. in the context of election observation missions, to consider including in the ethical framework a specific part dedicated to election observation, in order to ensure effective compliance with the Guidelines, strengthened and clarified as indicated in the Investigation Body's assessment.