

3 May 2021

## **Alleged breaches of the Code of conduct for members of the Parliamentary Assembly – Decision of the Committee on Rules of Procedure, Immunities and Institutional Affairs on a complaint concerning Mr Oleksii Goncharenko (Ukraine, EC/AD)**

### **Memorandum**

Prepared by the Chairperson of the committee

On 12 March 2021 the President of the Parliamentary Assembly referred to the Committee on Rules of Procedure, in accordance with paragraph 20 of the Code of Conduct for Members of the Parliamentary Assembly, a complaint concerning Mr Oleksii Goncharenko (Ukraine, EC/AD), following a letter addressed to him by Mr Tolstoy, Vice-President of the Assembly and Chairperson of the Russian delegation, dated 28 January 2021.

Mr Tolstoy's complaint refers to two statements made by Mr Goncharenko during the Assembly's [27 January 2021 afternoon plenary sitting](#), but relates primarily to a video recorded by Mr Goncharenko in the Chamber during the current affairs debate on "The arrest and detention of Alexei Navalny", which was posted on [his Facebook page](#) (see **Appendix 1**). Mr Tolstoy claimed that Mr Goncharenko's statements were offensive and therefore in breach of Rule 22 of the Assembly's Rules of Procedure and the Code of Conduct for Members of the Parliamentary Assembly.

### **Procedure followed by the Committee on Rules of Procedure**

The committee followed the procedure laid down in the Code of Conduct for Members of the Parliamentary Assembly (paragraphs 21 - 27) and respected the procedural safeguards provided for in paragraph 21 of the Code of Conduct as well as by the Guidelines it approved in 2018.

It has, however, had to adapt the framework set by the Code of Conduct to the constraints of holding meetings remotely or in hybrid mode, while scrupulously respecting the procedural steps and the requirements of confidentiality and respect for the adversarial process.

In accordance with the procedure foreseen in the Code of Conduct, the committee invited Mr Goncharenko to be heard at its meeting of 25 March 2021. As Mr Goncharenko informed the committee of his unavailability on that date, the committee decided to postpone his hearing to the next meeting.

Mr Goncharenko was heard by the committee on 21 April 2021, in a meeting held in camera, and answered questions from members. The committee continued its examination of the complaint and its deliberations at its following meeting on 27 April 2021, also held in camera. It took note of the observations submitted by Mr Goncharenko – which had previously been communicated to the members of the committee upon receipt – and which sought to demonstrate, by bringing to their attention relevant excerpts from Mr Tolstoy's Facebook account, that such publications included offensive statements which could also be the subject of a complaint.

In successive votes, the committee first considered that the allegations against Mr Goncharenko were well-founded and that he had violated the provisions of the Code of Conduct; it then determined that the facts

complained of constituted a serious breach of the Code (paragraph 25)<sup>1</sup>; and finally, it considered that this breach should lead to a sanction.

### The committee's sanction decision

The committee concluded that Mr Goncharenko had committed a serious breach of paragraphs 5.3 and 7 of the Code of Conduct. On the basis of paragraph 27, which lists possible sanctions<sup>2</sup>, the committee decided to temporarily deprive Mr Goncharenko of the right to speak in the Chamber and to be enrolled on the list of speakers of the Assembly's plenary sittings for a period of three months (from 27 April to 27 July 2021).

### Considerations taken into account by the committee

The committee wished to recall that the [Code of conduct for members of the Parliamentary Assembly](#) "outlines general principles of behaviour which the Assembly expects of" members of the Assembly "in the discharge of their duties", and that it "applies to members in all aspects of their public life relevant to their duties as members of the Parliamentary Assembly".

In particular, the committee recalled that in the exercise of their mandate, members of the Assembly are bound by a number of general principles of behaviour and specific rules of conduct. In the present case, Mr Goncharenko was required not to "act in such a way as to bring the Assembly into disrepute or **tarnish the Assembly's image**" (paragraph 5.3) and "take any action which would cause **damage to the reputation and integrity of the Assembly or its members**" (paragraph 7).

The committee thus maintained its jurisprudence. In a previous progress report of 2019 ([document AS/Pro \(2019\) 11 def](#)), the committee stated that the distinction between a minor violation (paragraph 24) and a serious breach (paragraph 25) is based on "**the level of the damage caused to the Assembly as an 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.**"

The committee also took into account in its decision relevant complementary provisions concerning the conduct of Assembly members during Assembly debates.<sup>3</sup>

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<sup>1</sup> "If the committee finds that there has been a serious breach of the code of conduct, it will prepare a report containing all the evidence gathered in the course of the investigation, the observations of the member concerned, and its conclusions. This report will be published on the Assembly's website. The committee shall decide whether to impose a sanction and determine the appropriate sanction, in accordance with paragraph 27."

<sup>2</sup> "In cases of serious or repetitive breaches of the rules of conduct by a given member, the committee may take one or several of the following measures:

**27.1. temporary deprivation of the right to speak and to be enrolled on the list of speakers;**

27.2. temporary deprivation of the right to sign an amendment, a motion for a resolution or recommendation or a written declaration;

27.3. temporary deprivation of the right to address questions to the Committee of Ministers;

27.4. temporary deprivation of the right to be appointed rapporteur or temporary ban on acting as a committee rapporteur;

27.5. temporary ban on being a member of an ad hoc election observation committee;

27.6. temporary deprivation of the right to stand as a candidate for President of the Assembly or chairperson or vice-chairperson of a committee or sub-committee;

27.7. and temporary deprivation of the right of institutional representation of the Assembly and its committees."

<sup>3</sup> **Complementary provisions to Rule 22 of the Rules of Procedure (extracts):**

" (...) Members of the Parliamentary Assembly shall behave in a courteous, polite and respectful manner towards each other and towards the President of the Assembly or any other person who is presiding. They shall refrain from any action that may disrupt the proceedings. This provision shall apply *mutatis mutandis* to meetings of the Bureau and of committees. (...)"

**Complementary provisions on the Access to the Palais de l'Europe during sessions of the Assembly and use of offices (extracts):**

"Use of electronic means of communication during sittings and meetings:

24. Assembly members and individuals attending or participating in sittings or meetings shall exercise discretion when using mobile telephones and other electronic means of communication and shall refrain from any behaviour that might

The committee ruled out any discussion on the issue of the use of social media by Assembly members, recognising that their freedom of expression was not at issue in the case before it. It considered that the problem was the use of the Assembly's premises and facilities for personal purposes. The committee concluded that, in this case, Mr Goncharenko deliberately staged himself in the Chamber and recorded a video in which he made insulting remarks about another member of the Assembly which were completely unrelated to the ongoing debate in plenary. By using the Chamber, an official venue, as the setting for his video, Mr Goncharenko instrumentalised the Assembly in order to give his message symbolic weight to an outside audience, thereby damaging the Assembly's reputation and tarnishing its image.

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*interfere with the smooth conduct of business. Anyone who fails to comply with these instructions will be asked to leave the Chamber or meeting room.*

*25. Committee meetings must not be filmed or recorded, even partially, by those attending or participating in the meetings."*

**APPENDIX - Transcript of a post by Mr Goncharenko on his Facebook account, 27 January 2021**  
*(Council of Europe translation department)*

<p>Дорогие друзья, я в Парламентской ассамблее Совета Европы.</p> <p>И вот сижу тут, видите: сзади меня сидит пропагандист, негодяй - господин Толстой, убийца, который - во-он смотрит! - убийца, который - против которого введены санкции, антисемит. Знаете, как о нём правильнее всего сказать? Для кого-то граф Толстой, а сам просто- ну, в общем, вы поняли кто . На словах он граф Толстой, а по делу ... простой.</p> <p>Вот, собственно говоря, сказано - лучше и не скажешь, это Пелевин. Вот, видишь - видите этого негодяя? И вот он вылез что-то сказать. Вот, вот урод, вот урод, самый настоящий. Граф Толстой, блин. Вот такие ничтожества сюда едут, приспешники Путина. Ну ничего, ничего: он уже под санкциями, скоро всё у него тут заберут в Европе, и будет сидеть в комнате грязи в Геленджике, где ему и место. Больше ему нигде не место. И на шесте крутиться перед Путиным. Неприятно слушать!</p>	<p>Dear friends, I'm in the Parliamentary Assembly of the Council of Europe.</p> <p>And I'm sitting here, you see: behind me is a propagandist, a scoundrel - Mr Tolstoi, a murderer who – oh! He's looking! – a murderer who has had sanctions imposed on him, an anti-Semite. Do you know how he would be most accurately described? For some, he is Count Tolstoi, but he's actually just a .... Well, you know what I mean, don't you? In name, it's Count Tolstoi, but in fact he's just a simple ... .</p> <p>So there you are. In fact it was Plevin who said that, and you won't say it any better. There he is, can you see him, this scoundrel? Look, he comes out to say something. There he is, this freak, a real freak. Count Tolstoi, damn it! These are the kinds of pipsqueaks that come here, Putin's henchmen. But it doesn't matter, it doesn't matter. He's already under sanctions. They'll soon take everything off him in Europe and he'll be sitting in the “Mud Warehouse” in Gelendzhik palace, and that'll be the right place for him. He doesn't have his place anywhere else now. And he'll be spinning round the pole in front of Putin. How unpleasant to hear!</p>	<p>Chers amis, je me trouve à l'Assemblée parlementaire du Conseil de l'Europe.</p> <p>Et je suis assis ici, vous voyez : derrière moi, se trouve un propagandiste, une canaille – Monsieur Tolstoï, un meurtrier, qui... – Oh, il regarde ! – un meurtrier ... contre qui ont été imposées des sanctions, un antisémite. Savez-vous ce qu'il vaudrait mieux dire de lui ? Pour les uns, c'est le comte Tolstoï, mais lui... c'est simplement un .... Bref, vous avez compris qui il est. En apparence, c'est le comte Tolstoï, mais en fait c'est un simple ... .</p> <p>Voilà. En fait, on ne peut mieux le dire que ne l'a fait Pélévine. Voilà, tu vois, vous voyez cette canaille ? Voilà qu'il s'est avancé pour dire quelque chose. C'est un monstre, un vrai monstre. Le Comte Tolstoï, mince ! Des nullités comme cela viennent ici, des valets de Poutine. Mais ce n'est pas grave, ce n'est pas grave. Il est déjà la cible de sanctions. Bientôt on va le dépouiller de tout en Europe. Et il se tiendra dans l'« entrepôt de boue » au palais de Guélandjik, où il a sa place. Il n'a sa place nulle part ailleurs. Et il se trémoussera sur la barre devant Poutine. C'est désagréable à écouter!</p>
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