



**AS/Pro (2012) 03 def**

24 January 2012

ardoc03\_2012

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

# Challenge on procedural grounds of the still unratified credentials of the Ukrainian parliamentary delegation

## Report

presented by Mr Egidijus Vareikis, Chairperson, on behalf of the committee

### A. Opinion to the President of the Parliamentary Assembly<sup>1</sup>

1. On 23 January 2012, the still unratified credentials of the parliamentary delegation of Ukraine were challenged on procedural grounds, in accordance with Rule 7 of the Assembly's Rules of Procedure, on the ground that the composition of the delegation did not satisfy the criterion of fair representation of the political parties or groups.

2. At its meeting on 24 January 2012, the Committee on Rules of Procedure, Immunities and Institutional Affairs examined the various objections raised and established that the Ukrainian delegation to the Parliamentary Assembly was appointed in compliance with Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure, as regards the fair representation of political parties and groups in the delegation.

3. Consequently, the Committee concludes that the credentials of the Ukrainian parliamentary delegation should be ratified.

4. However, the Committee notes that the list of members of the Ukrainian delegation as transmitted to the President of the Parliamentary Assembly contains misleading information in particular as regards the political affiliation of three members: Mr Valeriy Pysarenko, representative, and MM Oleksandr Feldman and Volodymyr Pylypenko, substitutes, listed as members of the Yuliya Tymoshenko Bloc, actually sit in the parliament under other political labels. It asks the President of the Parliamentary Assembly to invite the Speaker of the Ukrainian Parliament to clarify the issue of the political affiliation of these three parliamentarians and to send to the President of the Parliamentary Assembly updated information.

5. Moreover, the Committee invites the President of the Parliamentary Assembly to remind the Speaker of the Ukrainian Parliament and the Ukrainian parliamentary delegation that promoting political pluralism, in particular through the promotion of standards and practices guaranteeing pluralist functioning of national parliaments, is a clear commitment of all parliaments of Council of Europe member states. In this connection it refers more specifically to its Resolution 1601 (2008) on the rights and responsibilities of the opposition in a

<sup>1</sup> Adopted unanimously by the committee on 24 January 2012.

democratic parliament and its Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly.

## **B. Explanatory memorandum**

### **1. Introduction**

1. At the opening of the 2012 session, at the 23 January sitting, Mr Vareikis, on behalf of the EPP/CD group, challenged the still unratified credentials of the Ukrainian delegation to the Parliamentary Assembly on procedural grounds (Rule 7.1 of the Rules of Procedure), and specifically on the ground that three of its members – Mr Valeriy Pysarenko, representative, and MM Oleksandr Feldman and Volodymyr Pylypenko, both substitutes – listed as members of the Yuliya Tymoshenko Bloc, an opposition formation, actually sat in their parliament under other political labels. In accordance with Rule 7.2, the Assembly referred the credentials to the Committee on Rules of Procedure, Immunities and Institutional Affairs.

2. The committee must therefore consider whether the procedure for appointing the Ukrainian delegation:

- was consistent with the principles set forth in Article 25 of the Statute of the Council of Europe read in conjunction with Rule 6 of the Assembly's Rules of Procedure, and

- whether it infringed the principles guaranteed in Rule 7.1.b of the Assembly's Rules of Procedure

3. Under Rule 7.2, "*If the Committee concludes that the credentials should be ratified, it may submit an opinion to the President of the Assembly, who shall read it out in the plenary sitting of the Assembly or the Standing Committee, without debate. If the Committee concludes that the credentials should not be ratified or that they should be ratified but that some rights of participation or representation should be denied or suspended, the Committee's report shall be placed on the agenda for debate within the prescribed deadlines*".

### **2. Conformity of the composition of the Ukrainian parliamentary delegation with Rule 6 of the Assembly's Rules of Procedure**

4. Rule 7.1.b. of the Assembly's Rules of Procedure provides as follows: "*Credentials may be challenged by at least ten members of the Assembly present in the Chamber, belonging to at least five national delegations, on stated procedural grounds based upon (...) the principles in Rule 6.2, that national parliamentary delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments (...)*".

5. The challenge to the credentials of the Ukrainian parliamentary delegation is clearly based on the fact that the delegation's composition apparently does not satisfy the criterion of fair representation of political parties or groups laid down in the Rules of Procedure.

6. Pursuant to Articles 25 and 26 of the Statute of the Council of Europe, the Ukrainian parliamentary delegation is entitled to twelve representatives and twelve substitutes. The report by the President of the Assembly on examination of the credentials of representatives and substitutes for the 2012 Ordinary Session of the Assembly (Doc. 12828) states that the composition of the Ukrainian parliamentary delegation is as follows:

#### *Representatives*

Ms Oksana BILOZIR (Christian Democratic Union)  
Ms Olena BONDARENKO (Yuliya Tymoshenko Bloc)  
Ms Olha HERASYM'YUK (Our Ukraine)  
Mr Serhiy HOLOVATY (Party of Regions)  
Ms Yuliya LIOVOCHKINA (Party of Regions)  
M. Ivan POPESCU (Party of Regions)  
Mr Valeriy PYSARENKO (Yuliya Tymoshenko Bloc)  
Mr Volodymyr RYBAK (Party of Regions)  
Mr Mykola SHERSHUN (The Lytvyn Bloc)  
Mr Serhiy SOBOLEV (Yuliya Tymoshenko Bloc)  
Mr Petro SYMONENKO (Communist Party)  
Mr Kostiantyn ZHEVAHO (Yuliya Tymoshenko Bloc)

### *Substitutes*

Mr Oleksandr FELDMAN (Yuliya Tymoshenko Bloc)  
 Mr Mustafa JEMILIEV (Our Ukraine)  
 Mr Serhii KIVALOV (Party of Regions)  
 Mr Serhiy KLYUEV (Party of Regions)  
 Mr Yevhen MARMAZOV (Communist)  
 Mr Oleksiy PLOTNIKOV (Party of Regions)  
 Mr Volodymyr PYLYPENKO (Yuliya Tymoshenko Bloc)  
 Mr Yevgeniy SUSLOV (Yuliya Tymoshenko Bloc)  
 Mr Volodymyr VECHERKO (Party of Regions)

#### **2.1. The credentials of the Ukrainian delegation transmitted on 2 January 2012**

7. In accordance with Article 25 of the Statute, the members (representatives and substitutes) representing a Council of Europe member state in the Assembly are “*elected by [their] Parliament from among the members thereof, or appointed from among the members of that Parliament, in such manner as it shall decide*”.

8. Rule 6.1. provides as follows: “*The credentials of the representatives and substitutes, elected within the national or federal parliament or appointed from among the members of the national or federal parliament, shall be sent to the President of the Assembly by the President (Speaker) of the national parliament or the President (Speaker) of a national parliamentary chamber or any person delegated by them. Each member state shall notify the Secretary General of the Council of Europe of the competent authority it has appointed for the purpose. The credentials shall be transmitted, if possible, not less than one week before the opening of the Session*”.

9. For Ukraine, the competent authority is the Speaker of the *Verkhovna Rada* or any other person to whom he delegates authority. The Ukrainian credentials for the 2012 parliamentary year were transmitted in a letter from the Speaker of the *Verkhovna Rada*, Mr Volodymyr Lytvyn, dated 23 December 2011, and received by the President of the Parliamentary Assembly on 2 January 2012. This letter says that “the mandates of the members and deputy members of the permanent delegation of the *Verkhovna Rada* of Ukraine approved earlier by the Parliamentary Assembly of the Council of Europe remain valid for the period of the 2012 session”.

10. On 19 January 2012, the President of the Parliamentary Assembly received a letter dated 18 January co-signed by Mr A Kozhemiakin, leader of the *BYUT-Batkivshchyna* faction, and Mr M Martynenko, leader of the *Our Ukraine-People's Self Defense* faction, informing the Assembly that, in 2010, the *BYUT-Batkivshchnyna* faction had excluded MM Valeriy Pysarenko, Oleksandr Feldman and Volodymyr Pylypenko on the grounds of their collaboration with the pro-presidential majority. This faction then decided to replace them, in the delegation to the Parliamentary Assembly, with MM Roman Zvarych, Stepan Kurpil and Elina Shishkina. This decision was endorsed by the foreign affairs committee of the *Verkhovna Rada* which, under the rules of procedure, is responsible for transmitting to the Speaker of the *Verkhovna Rada* the recommendations from factions and groups for appointments to international parliamentary delegations. These recommendations were taken into account neither for the opening of the 2011 session nor for that of 2012. Furthermore, the signatories state that MM Valeriy Pysarenko and Volodymyr Pylypenko are at present not members of any group or faction and that Mr Oleksandr Feldman has become a member of the Party of Regions, belonging to the parliamentary majority.

#### **2.2. Political composition of the Verkhovna Rada**

11. The information posted on the official internet site of the *Verkhovna Rada*<sup>2</sup>, which is reproduced in the appendix to the present report, states that there are five factions (plus one group of deputies<sup>3</sup>).

12. Within the *Verkhovna Rada*, the parliamentarians may group into factions or groups of deputies. Under rule 58 of its rules of procedure, the factions are formed on the basis of the parties by the deputies elected from the list of political parties (electoral blocs of political parties) who have gained office following the parliamentary elections. One political party (one electoral bloc of political parties) may form a single

<sup>2</sup> <http://static.rada.gov.ua/site/eng/factions.htm>

<sup>3</sup> However, another group of deputies, « Right of Choice », set up more recently, is not mentioned at all on the internet site.

faction within the parliament. Non-affiliated deputies may join a Parliamentary group of deputies (rule 59 of the rules of procedure). A deputy may be a member of only one faction or only one parliamentary group.

13. The same internet site also states that:

– Mr Volodymyr Pylypenko was a member of the Yuliya Tymoshenko Bloc faction from 3 June 2006 to 21 September 2010; at present he is not a member of any faction or group.

– Mr Valeriy Pysarenko was a member of the Yuliya Tymoshenko Bloc faction from 23 November 2007 to 21 September 2010; at present he is not a member of any faction or group.

– Mr Oleksandr Feldman was a member of the Yuliya Tymoshenko Bloc faction from 23 November 2011 to 16 March 2011 and joined the Party of Regions faction on 16 March 2011.

14. Indeed, the parliamentary situation seems confused. Since law no. 2222-VI was declared unconstitutional, on 30 September 2010, the *Verkhovna Rada* has no longer made any official distinction between the majority coalition and the opposition (see Venice Commission opinion no. 599 (2010), adopted in December 2010, on the constitutional situation in Ukraine, particularly paragraphs 22 to 28<sup>4</sup>).

15. A parliamentary majority exists, without there really being a legal basis in the rules of procedure. It comprises the Party of Regions, the People's Party and the Communist Party and, as of 1 January 2012, represents 53% of the seats (237) in the *Verkhovna Rada*<sup>5</sup>. Where the parliamentary opposition is concerned, the real situation is trickier to grasp, particularly in view of the changing political situation – groups of parliamentarians leaving one bloc for another; the creation in 2010 and 2011 of two groups of deputies; parliamentarians having become independents more or less unofficially joining forces with the majority etc – with the result that there is legal uncertainty hanging over the functioning of the institutions. Accordingly it is difficult, to say the least, to obtain definite and up-to-date figures enabling the Committee on Rules of Procedure to ascertain exactly whether the factions and political groups – as they now stand – are fairly represented in the Parliamentary Assembly in 2012.

### **2.3. Assessment**

16. It should firstly be pointed out that, in March 2011, the Assembly adopted Resolution 1798 on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, on the basis of a report by the Committee on Rules of Procedure, listing a set of 12 principles for assessing whether political parties or groups are fairly represented in the national delegations to the Assembly. The present challenge to credentials provides the Committee with an opportunity to apply those principles.

17. There are few precedents where the Assembly has had to rule on a challenge alleging a lack of fair political representation of political parties and groups to which the Committee can refer:

– In January 2010, the Committee had to rule on two challenges to credentials not yet ratified on procedural grounds, mainly those of the Armenian parliamentary delegation and Albanian parliamentary delegation, both of which related to the alleged under-representation of the opposition's political parties or groups. In both cases, the Committee concluded that the credentials may be ratified<sup>6</sup>.

– Previously, in September 2009, when examining a challenge to the credentials of the Parliamentary delegation of Moldova, it had also concluded that the credentials may be ratified, while calling on the national parliament concerned, as in the other two aforementioned cases, to take the requirements laid down by the Assembly's Rules of procedure fully into account, with respect to ensuring balanced political representation within the delegations.

– In 1998 and 1999, the Committee on Rules of Procedure ruled on the composition of the special guest delegation of Armenia, in a case where the main opposition party in Parliament had not been allocated any of the delegation's 4 seats<sup>7</sup>. The Committee on Rules of Procedure concluded at that time that "a

<sup>4</sup> [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)044-f.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)044-f.pdf)

<sup>5</sup> [http://bilshist.rada.gov.ua/bilshist/control/uk/publish/article?art\\_id=45434&cat\\_id=45421](http://bilshist.rada.gov.ua/bilshist/control/uk/publish/article?art_id=45434&cat_id=45421)

<sup>6</sup> See the two opinions submitted to the President of the Parliamentary Assembly, documents AS/Pro (2010) 05 def and AS/Pro (2010) 06 def.

<sup>7</sup> See the reports transmitted to the Bureau, doc. AS/Pro (1998) 11 and AS/Pro (1999) 03.

*delegation comprising no representatives of the main opposition party cannot be considered to reflect the different currents of opinion represented within the parliament".*

18. The Committee further pointed out that it had always held that *"rigorous representation of all political forces can never be ensured in member parliaments, which have a limited number of seats in the Assembly and possess more political groups than there are seats to be filled"*<sup>8</sup>, which is why Rule 6.2.a. of the Rules of Procedure stipulates that national delegations should be composed so as to ensure a fair representation of the political parties *"insofar as the number of their members allows"*.

19. Within the Ukrainian parliamentary delegation, the majority clearly holds 4 representatives' seats out of 12 and 5 substitutes' seats out of 12. However, in the absence of reliable data as to the exact number of parliamentarians affiliated to political opposition formations, it is difficult for the Committee on Rules of Procedure to assess to what extent the requirements laid down in the Assembly's Rules of procedure as regards fair political representation have been met. There is nothing to indicate that the principles enshrined in Rule 7.1 of the Assembly's Rules of Procedure have not been respected by the Ukrainian Parliament.

20. Finally, the Committee on Rules of Procedure also expects the members of the Ukrainian delegation to fully inform it of the procedure for appointing members of international parliamentary delegations, provided for in the rules of procedure of the *Verkhovna Rada*, so that it may more closely examine the allegation put forward by MM Kozhemiakin and Martynenko that the procedure in question has been violated.

21. At its meeting on 24 January 2012, the Committee on Rules of Procedure had an exchange of views with Mr Popescu, Chairperson of the Ukrainian delegation. He indicated that statistics show that all the factions in the *Verkhovna Rada* are actually represented in the delegation, in proportion to their numerical representativeness; therefore the composition of the delegation fully complies with the principle of fair political representation as required by the Assembly's Rules of Procedure.

### 3. CONCLUSIONS

22. It is not for the Committee on Rules of Procedure to become involved in party politics when verifying the credentials of delegations. The Assembly has laid down specific criteria for assessing whether a national delegation to the Assembly fairly represents the political parties or groups present in the national parliament concerned. One of the principles for assessing the notion of fair representation of political parties or groups laid down in Resolution 1798 (2011) states that the Assembly should "avoid becoming involved in a detailed analysis of the political composition of a delegation", and it is further pointed out that "the Assembly assesses merely whether the representation of the political groups of the parliament is fair, not whether it is proportionate".

23. On this basis, there is nothing to suggest that the principles enshrined in Rule 7.1 of the Assembly's Rules of procedure have not been respected. However, the Committee on Rules of Procedure notes that:

- the list of members of the Ukrainian delegation transmitted to the President of the Assembly has not been updated in terms of their political affiliations; this list therefore contains misleading information in particular as regards the political affiliation of MM Valeriy Pysarenko, Oleksandr Feldman and Volodymyr Pylypenko, who are listed as members of the Yuliya Tymoshenko Bloc, but actually sit under other political labels;
- more generally, the Speaker of the *Verkhovna Rada* has not forwarded precise and up-to-date information to the Assembly, for 2011 and for 2012, on the number and denomination of factions and groups and the distribution of members between those factions and groups;
- if corroborated, the objection raised, to the effect that the procedure for appointing representatives of factions to the delegation, as laid down by the rules of procedure of the *Rada*, has been infringed, is a serious one and would point to serious malfunctions within the *Verkhovna Rada*, particularly as it undermines the parliamentary opposition's exercise of its rights.

24. Therefore, after examining the objections raised, the Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the composition of the Ukrainian parliamentary delegation is in conformity with Rule 6 of the Assembly's Rules of Procedure. Consequently, the committee proposes that the Assembly ratify the credentials of the delegation.

<sup>8</sup> See the report on the appointment of national delegations to the Parliamentary Assembly, 1996, rapporteur: Mr Schieder (Doc. 7627).

25. However, it takes the view that the President of the Parliamentary Assembly shall send a letter to the Speaker of the Ukrainian Parliament:

- inviting him to clarify the issue of the political affiliation of the members of the Ukrainian parliamentary delegation and to send to the President of the Parliamentary Assembly updated information;
- reminding the Speaker of the commitment of all parliaments of Council of Europe member states to promote political pluralism, in particular through the promotion of standards and practices guaranteeing pluralist functioning of national parliaments, and to ensure the implementation of Assembly recommendations, in particular in the present case Resolution 1601 (2008) on the rights and responsibilities of the opposition in a democratic parliament and Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly.

## Appendix 1

<i>Date:</i> 23/01/2012	Representation of political parties in the <i>Verkhovna Rada</i>		Representation in the delegation to the Parliamentary Assembly (12 representatives and 12 substitutes)			
	<i>No. of seats held</i>	<i>Percentage of seats held</i>	<i>Members</i>	<i>Substitutes</i>	<i>Total</i>	<i>Percentage of the delegation</i>
Faction of the Party of Regions	192	53%	4	5 <i>(6)</i>	9 <i>(10)</i>	37.5% <i>(41.7%)</i>
Faction of the Communist Party of Ukraine	26		1	1	2	8.5%
Faction of the People's Party (former Lytvyn Bloc)	21		1		1	4.2%
Faction of the Yuliya Tymoshenko Bloc-Batkivshchyna	103	23%	4 <i>(3)</i>	5 <i>(3)</i>	9 <sup>9</sup> <i>(6)</i>	37.5% <i>(25%)</i>
Faction of the Bloc "Our Ukraine – People's Self-Defence" <sup>10</sup>	65	14.44%	2	1	3	12.5%
Deputy Group "Reforms for the Future"	22	4.9%				
Members not included in any faction or group	21	4.7%	<i>(1)</i>	<i>(1)</i>	<i>(2)</i>	<i>(8.5%)</i>
Total	450		12	12	24	100%

*(in brackets and italic: corrected figures which take into account the situation of three members who no longer belong to the Yulia Tymoshenko Bloc)*

<sup>9</sup> Y compris les trois membres contestés comme n'appartenant plus au Bloc Yulia Tymoshenko.

<sup>10</sup> Grouping the following parties: People's Union "Our Ukraine", Political party "Forward, Ukraine!", People's Movement of Ukraine (Rukh), Ukrainian People's Party, Ukrainian Republican Party "Sobor", Christian-Democratic Union Party, European Party of Ukraine, Civic party "PORA", Party of Motherland Defenders.

In September 2011, the members of the "Christian Democratic Union" left this faction to join the « Right of Choice » group, set up in July 2010. This Group does not appear in the table.