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The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds

Opinion¹

Committee on Rules of Procedure and Immunities

Rapporteur: Mr Christos Pourgourides, Cyprus, Group of the European People's Party

I. Conclusions of the Committee

The Committee on Rules of Procedure and Immunities considers that the operative part of the draft resolution tabled by the Monitoring Committee is in conformity with the Assembly's Rules of Procedure.

II. Proposed amendment to the Draft Resolution

At the beginning of paragraph 11, insert the word "However".

¹ See Document 10807rev. tabled by the Monitoring Committee.

I. Introduction

1. At the opening of the current part-session on Monday 23 January 2005, Mr. Gross, supported by the required number of Assembly members, challenged the credentials of the national delegation of Azerbaijan, as reproduced in Doc. 10807 on substantial grounds under Rule 8 of the Assembly Rules of Procedure in connection with the parliamentary elections that took place on 6 November 2005. According to Rule 8.3 the contested credential were referred to the Monitoring Committee for report and to the Committee on Rules of Procedure and Immunities for opinion.

2. This draft opinion will examine, strictly on procedural grounds, if

- the challenge of the credentials
- and the consequences proposed in the report by the Monitoring Committee (Doc.10807) are in conformity with the Assembly's Rules of Procedure and the Statute of the Council of Europe.

II. Challenge of the credentials of the national delegation of Azerbaijan

3. The relevant parts of Rule 8, paragraphs 1 and 2 of the Assembly's Rules of Procedure provide as follows:

"1. The unratified credentials of a national delegation as a whole may be challenged on the substantial grounds set out in paragraph 2 by:

a. at least ten members of the Assembly present in the chamber, belonging to at least five national delegations, [...].

2. The substantial grounds on which credentials may be challenged are:

a. serious violation of the basic principles of the Council of Europe mentioned in Article 3 of, and the Preamble² to, the Statute; or

b. persistent failure to honour obligations and commitments and lack of co-operation with the Assembly's monitoring procedure."

4. The challenge on substantial grounds by Mr Gross of the credentials of the national delegation of Azerbaijan was justified with the persistent failure of the Azerbaijan authorities to honour obligations and commitments made in connection with the parliamentary elections in the country held on 6 November 2005 (Rule 8 par.2.b.of the Rules of Procedure).

5. The report by the Monitoring Committee gives full details concerning the violations of the obligations and commitments made by the authorities of Azerbaijan regarding the holding of elections in conformity with the Council of Europe standards. The draft resolution, paragraph 8, presented by the Monitoring Committee rightly underlines that "Free and fair elections are at the basis of democracy and constitute one of the most important commitments and obligations of any country sharing as a member state the values and standards of the Council of Europe. The way the November elections were conducted clearly shows that there is a persistent failure by Azerbaijan to honour its commitments to the Council of Europe."

6. As the successful challenge of credentials of a national delegation on substantial grounds under Rule 8.2.b requires a persistent failure to honour obligations and commitments, it has to be considered if that criteria has been met.

² Preamble to the Statute, third paragraph: "Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy."

Article 3 of the Statute: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I."

7. The provisions of the Statute of the Council of Europe and of the United Nations Charter both refer, in connection with the procedure of sanctions against member states, to either serious violations or persistent violations of obligations by these states. In this connection, the term “persistent” is interpreted in international law as follows. First, there must be repeated violations. Second, the expression “persistently” points to a stubborn resolve to continue the law-breaking practice which is called “continues obstinately”. Third, the “persistently violation” formula emphasizes a “quantitative” and a “qualitative” aspect. The importance of the principle violated can be taken into consideration.

8. The explanations given in the report of the Monitoring Committee (Doc. 10807) are in conformity with the afore-mentioned principles. Therefore, the criteria mentioned in Rule 8.2.b. of the Assembly’s Rules of Procedure have been met.

III. Consequences of the persistent failure of the Azeri authorities to honour obligations and commitments

9. The draft resolution presented in the report of the Monitoring Committee, paragraphs 10 and 11, concludes that the conduct of the November 2005 parliamentary elections in Azerbaijan falls within the provision of Rule 8.2.b. of the Assembly’s Rules of Procedure: “persistent failure to honour obligations and commitments”. The Monitoring Committee proposes, however, that the Assembly should ratify the credentials of the parliamentary delegation of Azerbaijan. To make paragraphs 10 and 11 fully consistent, it is proposed to add the word “however” at the beginning of paragraph 11. This conclusion is in conformity with the possibilities provided for in Rule 8.5 of the Rules.

10. The Committee on Rules of Procedure and Immunities noted that the draft resolution presented by the Monitoring Committee proposes in its paragraph 12 that the Assembly should “instruct its Monitoring Committee to submit to the Assembly at its June part-session a report on the progress made in all the areas mentioned in paragraph 9 of the Resolution. On the basis of this report, the Assembly will then examine whether to apply Rule 9 of the Rules of Procedure on the reconsideration of previously ratified credentials on substantial grounds.” This proposal is in conformity with the Rules of Procedure

11. It is also to be noted that the amendments proposed to the draft resolution also seem to be in conformity with the Rules of Procedure.

IV. Final remark

12. The Committee has unanimously approved the draft opinion.