

AS/Pro (2014) 10 def
30 September 2014
ardoc10_2014

Committee on Rules of Procedure, Immunities and Institutional Affairs

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

Opinion for the Bureau of the Assembly¹

Prepared by the Chairperson of the Committee, Ms Nataša VUČKOVIĆ (Serbia, Socialist Group)

1. Introduction

1. At its April part-session 2014, the Parliamentary Assembly adopted Resolution 1990 (2014) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation in which “in order to mark its condemnation and disapproval of the Russian Federation's actions with regard to Ukraine, the Assembly resolves to suspend the following rights of the delegation of the Russian Federation until the end of the 2014 session: voting rights; right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee; right to participate in election observation missions” (paragraph 15).

2. At its meeting on 11 April 2014, the Bureau of the Assembly invited the Committee on the Rules of Procedure, Immunities and Institutional Affairs “to elaborate a list of rights of participation or representation of members that may be deprived or suspended in the context of a challenge or reconsideration of credentials under Rules 7, 8 and 9 of the Rules of Procedure of the Assembly and to clarify the extent to which paragraph 15.2 of the above resolution is compatible with the Rules of Procedure of the Assembly with regard to the representation of political groups”.

2. Brief historical review

2.1. Origin of the provisions implemented by Resolution 1990 (2014)

3. From their inception until 1996, the Assembly Rules of Procedure only provided for a comprehensive but simple procedure for examining credentials of members (under Articles 25, 26 and 28 of the Statute of the Council of Europe) whereby credentials which gave rise to an objection or were contested had to be referred to the Committee on Rules of Procedure. The Rules did not provide for a re-examination of ratified credentials in the course of a session, and this scenario never arose in practice for decades (the ratified credentials of a delegation remained valid for the whole parliamentary year).

¹ Approved by the Committee on 30 September 2014

4. With the adoption of Resolution 1081 (1996) on the challenge of credentials of national delegations in the course of an ordinary session,² the Assembly established a procedure allowing for a challenge of credentials in the course of a parliamentary year and no longer limited to the opening of the ordinary session. Furthermore, this very elaborate and very comprehensive procedure (need for a prior request meeting certain conditions as regards tabling and justification, precise stages in the processing of the request, etc.) provided that the Assembly would take its position on the request for credentials to be annulled on the basis of proposals outlining the consequences of the decision.

5. Rule 6 of the Rules of Procedure, in force from 1996 to 2000, provided that:

“The draft text shall, if appropriate, justify annulling the ratification of credentials of a delegation and submit proposals with respect to the consequences such as:

– depriving the members of the delegation concerned of tabling official documents in the sense of Rule 23 of the Rules of Procedure, taking on duties and voting in the assembly and its bodies, while maintaining those members’ rights to attend and to speak at Assembly part-sessions and meetings of its bodies, or

– depriving the members of the delegation concerned of the exercise of the full rights of participation in the activities of the assembly and its bodies”.

6. The new Rules of Procedure, which entered into force in 2000 following the general review conducted in 1999, provide for three separate procedures [challenge of still unratified credentials on procedural grounds (Rule 7), challenge of still unratified credentials on substantive grounds (Rule 8), and reconsideration of previously ratified credentials on substantive grounds (Rule 9)], but a single basic set of proposals as to the range of potential recommendations, i.e.:

- either the ratification of the credentials (or the confirmation of the ratification of the credentials),
- or the non-ratification of the credentials (or the annulment of the ratification of the credentials),
- or the deprivation or suspension of 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 (together with the ratification of the credentials or the confirmation of the ratification of the credentials).

7. Following the last review of the Rules of Procedure (Resolution 2002 (2014)), the corresponding rules (Rules 7.3, 8.5 and 9.4) have been merged into a single rule, Rule 10 “Decision of the Assembly on a challenge or reconsideration of credentials”.

2.2. *Examples of sanctions taken by the Parliamentary Assembly*

8. To date, the Assembly has made use of these regulatory provisions on very few occasions:³

– in April 2000, on the occasion of the reconsideration of the ratified credentials of the Russian delegation on substantive grounds in connection with the conflict in Chechnya, the Assembly decided to sanction the Russian delegation, by depriving its members “of their voting rights in the Assembly and its bodies” (the delegation recovered all its participation and representation rights in January 2001, with the adoption of Resolution 1241 (2001));

² See the report by the Committee on Rules of Procedure (Doc. 7481), February 1996.

³ Looking back a little further into the past, the Assembly did not refrain from sanctioning a parliamentary delegation to react to the violation by a member State of its obligations under the Statute, even outside any established regulatory procedure:

– Faced with the situation in Greece following the 1967 military coup d’état and the installation of the “colonels’ regime”, the Assembly took the decision “not to recognise the credentials of any Greek delegate purporting to represent the Greek Parliament until such time as the Assembly is satisfied that freedom of expression is restored and a free and representative parliament is elected in Greece” (Recommendation 547 (1969), January 1969). This decision was taken a few months before Greece’s withdrawal from the Council of Europe (December 1969 – November 1974).

– Similarly, bearing in mind the situation in Turkey following the 1980 coup d’état, the Assembly decided in May 1981 not to “envisage the prolongation of the term of office of the Turkish delegation” (Order 398), and then, in September 1983, that the elected parliament “will not be able to be considered as representing the Turkish people in a democratic manner, and could not therefore validly constitute a delegation to participate in the work of the Parliamentary Assembly” (Resolution 803).

- in January 2004, on the occasion of the challenge of the credentials of the delegations of Ireland and Malta, the Assembly suspended the voting rights of their members in the Assembly and its bodies, until the composition of these delegations had been brought into conformity with the requirement under the Rules with regard to the representation of both sexes (Resolution 1360 (2004); the delegations concerned recovered their voting rights in April 2004);
- lastly, in April 2014, the previously ratified credentials of the Russian delegation were reconsidered on substantive grounds in relation to the violation of the territorial integrity and sovereignty of Ukraine by the Russian armed forces; the Assembly decided to suspend the voting rights of its members, as well as some rights of participation or representation until the end of the 2014 session (Resolution 1990 (2014)).

9. It will also be noted that on two occasions in the past, the Assembly adopted “deferred sanctions”, deciding, in January 2011 in the case of a challenge on procedural grounds of the still unratified credentials of the parliamentary delegations of Montenegro, San Marino and Serbia, then in June 2013 in an identical case concerning the delegation of Iceland, to ratify these delegations’ credentials but to suspend the voting rights of their members in the Assembly and its bodies from the beginning of the following session up until their membership complied with the criteria set by the Rules of Procedure with regard to gender representation.

3. Catalogue of potential “sanctions”

10. The Bureau of the Assembly has asked the Committee on the Rules of Procedure, Immunities and Institutional Affairs to elaborate a list of rights of participation or representation of members that may be deprived or suspended in the context of a challenge of credentials.

3.1. *The limited sanctions available in the context of an assembly for interparliamentary co-operation*

11. It should be pointed out initially that, unlike the European Parliament and the national parliaments, the Parliamentary Assembly – like any other assembly for interparliamentary co-operation made up of national delegations – is not in a position to impose the most effective and dissuasive form of sanctions, namely financial ones, in the form of the reduction or withdrawal of parliamentary emoluments, as it does not pay its members.

3.2. *The impossibility of establishing an exhaustive list of measures*

12. New Rule 10 of the Rules of Procedure (as did Rules 7.3, 8.5 and 9.4 before June 2014) contains a general description of the sanctions which may be imposed on the members of a delegation, namely depriving or suspending the exercise of some of the rights of participation or representation of members concerned in the activities of the Assembly and its bodies. It would be a little presumptuous to attempt to draw up an exhaustive list of measures which might be taken. This would be to overlook the inventiveness of the human mind in general and the creativity of politicians in particular.

13. However, subject to the foregoing, it is possible to identify two main categories of rights attached to the exercise of a member’s functions in the Assembly such as those referred to in the aforementioned rules, which are linked both to the activities of the Assembly and to those of the committees.

3.2.1. *Participation rights*

14. This is both the largest category in terms of the number of rights it includes and the most important from a political and procedural viewpoint:

- right to vote (Rule 43)⁴
- right to speak (Rule 35)
- right to speak in free debates (Rule 39)

⁴ See also paragraphs 28 and 29.

- 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)
- 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.

3.2.2. *Representation rights*

15. This category covers 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.

4. **The need for “sanctions” to be legally certain and politically consistent**

16. When the Assembly is required to adopt a decision to deprive or suspend rights, it must ensure that it is consistent both from a legal and regulatory viewpoint and from a political one. This will determine the effectiveness of the “sanction” and the clarity and understanding of the Assembly’s actions. This makes it essential to take as rational and uniform an approach as possible and to refrain from taking undue advantage of the flexibility offered by the choice of possible sanctions, which would inevitably result in a wide variety of excessively complex, unclear decisions of doubtful rationality or, in short, decisions that would be inconsistent or impossible to apply. On a more political level, the Assembly shall also ensure that such “sanctions” are proportionate to the seriousness of the infringements in question.

4.1. *The inexpediency of dividing up sanctions*

17. The Committee on Rules of Procedure must draw attention to the potential risks of using a “list of sanctions” to determine the measures to be applied to a delegation whose credentials have been challenged, from which one would be able to “pick and choose” at random without assessing beforehand what impact the choice may have in terms of legal and political rationality or in terms of image.

18. The committee takes the view therefore that the priority should be on the consistency of the decision. For example, there is hardly any sense in depriving the members of a delegation of their right to vote together with their right to speak while still ratifying their credentials. Similarly, it is important to avoid adopting sanctions which may conflict with one another in practice or be open to interpretation as to their practical consequences (for example, depriving members of their right to speak but not of their right of amendment).

19. Lastly, as the Rules of Procedure provide that depriving or suspending the exercise of participation or representation rights applies to “the activities of the Assembly and its bodies”, not “or”, it hardly seems conceivable to decide that a sanction will apply to participation in the activities of the Assembly but not its committees, or vice-versa.

4.2. *The expediency of deciding on the length of sanctions*

20. The option of depriving or suspending the exercise of certain rights introduces a notion of duration into the decision on sanctions. Deprivation (in the form of a withdrawal or prohibition resulting in the loss of enjoyment of a right) is a far-reaching decision, without any time limit, whereas suspension (in the form of an interruption or temporary prohibition) is associated with a decision concerning duration.

21. For instance, in April 2000, the Assembly decided to deprive the members of the Russian delegation of their voting rights, and a further decision of the Assembly was needed to restore them. By contrast, the two decisions to suspend voting rights, taken in January 2004 and April 2014, both included an indication of the duration (see paragraph 8).

22. When it takes the decision, now on the basis of Rule 10 of the Rules of Procedure, to suspend the exercise of rights, the Assembly should state officially that the suspension applies for a fixed period (for example, the entire length of the current session; up to the following part session; until a requirement set out in the Rules of Procedure has been met). In any event, the suspension of a given right cannot extend beyond the current session.

23. On the other hand, because of the need for the sanction to be consistent, clear, rational and apply the rules in a uniform manner, the Assembly should not apply different times to different sanctions adopted in the context of a single decision (for example, suspending voting rights until the following part-session and prohibiting the tabling of documents until the end of the current session).

5. **Other issues requiring clarification**

24. During the April 2014 part-session, on the occasion of the reconsideration of the credentials of the Russian delegation, some questions relating to the understanding and interpretation of the rules on challenging or reconsidering a delegation's credentials were raised.

5.1. *Were the prerogatives of political groups infringed?*

25. The Bureau has asked the Committee on Rules of Procedure whether the sanction decided on by the Assembly in April 2014 to suspend the representation of the members of the Russian delegation in the Presidential Committee, the Bureau and the Standing Committee infringed the political groups' right of representation.

26. The Rules of Procedure stipulate the following:

- the Bureau shall consist of (...) the chairpersons of the political groups (or their representatives) (Rule 14.3),
- the Presidential Committee shall consist of (...) the chairpersons of the political groups (or their representatives) (Rule 14.4),
- the Standing Committee is composed of the chairpersons of the political groups or, in their absence, a member representing the group concerned (Rule 17.3.c).

27. Provided that the groups have the possibility of being represented in the three aforementioned bodies of the Assembly, the fact that a member of the Assembly who performs the functions of chair of a group has lost his or her right to be represented on certain bodies of the Assembly because he or she belongs to a delegation subject to sanctions, does not constitute an infringement of the prerogatives of the group concerned under the Rules of Procedure. The measure decided on by the Assembly is not, in any case, directed against the political group but against the delegation and in no respect is it an obstacle to its effective representation and participation in the bodies of the Assembly.⁵

⁵ With regard to the Bureau of the Assembly, recent examples show that the UEL group was represented by a group member at the meetings on 8 March, 23 April, 27 April and 29 June 2012, the EPP group was also represented by a group member at the meeting on 24 June 2013 and a vice-chairperson on 25 June and 1 October 2012, the ALDE group by a vice-chairperson at the meeting on 7 October 2011, and the EDG group by its second vice-chairperson on 24 January 2011. With regard to the Presidential Committee, the EPP group was represented by a vice-chairperson at the

28. It should also be pointed out that, with one exception, the rules of procedure or statutes of the political groups in the Parliamentary Assembly have nothing to say about the representative role of their Chairs in the bodies of the Assembly.⁶

5.2. Possible derogations to the deprivation or suspension of the right to vote?

29. The second issue raised relates to the admissibility of amendments to a draft resolution which proposes to deprive, or suspend, members of a delegation of their right to vote. For the record, the question arose during the Assembly's June 2014 part-session whether an amendment, which would have allowed members of the Russian delegation that has been sanctioned in April to take part in the election of the Secretary General of the Council of Europe, would have been in order.

30. The right to vote of parliamentarians is one and indivisible (as it is for the citizens' vote). In accordance with Rule 34.6, the President of the Assembly decided to rule out any amendment tabled to the draft resolution on the reconsideration of the Russian credentials allowing for an exception to the overall application of the suspension of the right to vote of the members of the delegation concerned (in this case, members of the Russian delegation – who had proposed the amendment – would have been able to take part in the election of the Secretary General of the Council of Europe). Consequently, depriving members of a delegation of their right to vote applies to all votes in the Assembly and its bodies (letter dated 9 April 2014, in reply to a letter sent by Mr Pushkov, chairperson of the Russian parliamentary delegation, on 8 April).

6. Conclusions and recommendations to the Bureau of the Assembly

6.1. Views expressed within the Committee on Rules of Procedure

31. At its meeting on 24 June 2014, the Committee on Rules of Procedure held a first exchange of views on the questions referred to it. There was a clear consensus in favour of stating categorically in this opinion that it cannot be used, including by the Bureau, as a basis for reconsidering or modifying the decision taken by the Assembly on 10 April 2014; that decision cannot be contested, is irrevocable and is not open to review.⁷

6.2. Recommendations for the Bureau of the Assembly

32. At its meeting on 30 September 2014, in the light of the analysis above, the Committee on Rules of Procedure, Immunities and Institutional Affairs approved the present opinion to the Bureau of the Assembly. It made the following recommendations:

– the Bureau is invited to take note of the list of rights of participation to, and representation in, the activities of the Assembly and its bodies that may be deprived or suspended in the context of a challenge of credentials, it being specified that such a comprehensive list can certainly not be exhaustive;

meetings on 24 June 2012, 2 September 2012, 30 September 2012, 20 January 2013, 23 June 2013 and 6 March 2014, the UEL group by a member at the meetings on 8 March 2012, 28 June 2012 and 7 November 2012, the EDG group by a vice-chairperson on 22 and 26 April 2012, and the ALDE group by a vice-chairperson on 7 November 2012.

⁶ Under the EPP/CD's Rules of Procedure, the group is led by the bureau, of which the Chair (President) is a member; it is the latter's role to represent the group in external matters (Article 14), and to convene and chair the meetings of the organs of the group (Article 16).

Under the statute of the SOC group, the group is led by the bureau; the Chair (President) is a member of the bureau and convenes the plenary Assembly of the group (Article III C).

Article 6 of the ALDE group's rules of procedure provides that the Chair or its representative represents the group in its external relations and in the organs of the Assembly in which the political groups have ex officio membership. The Chair is a member of the bureau and presides over the meetings of the groups and submits proposals for policy decisions.

The rules of procedure of the EDG group simply provide that the Chair of the group is responsible for the day-to-day management of the group's affairs (Article 6d), convenes the meetings of the group and is a member of the bureau over whose meetings he or she presides.

The UEL group does not have any formal rules of procedure.

⁷ Committee members were also invited to submit any other observations in writing so that they could be reflected in this opinion. Only one member submitted comments, Mr Salles (France, EPP/CD), in a letter of 27 June 2014 to the Chair of the committee.

– the Bureau should advocate 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. It is especially important in this regard to avoid adopting sanctions which contradict each other.

33. Moreover, with regard to whether the sanction decided on by the Assembly to suspend the representation of the members of the Russian delegation in the Presidential Committee, the Bureau and the Standing Committee infringed the political groups' right of representation, the Committee on Rules of Procedure, reflecting the opinion of the majority of its members, considered that the said measure is directed against a delegation – and not a political group – and in no respect is an obstacle to the effective representation and participation of the political group concerned in the bodies of the Assembly.