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Committee on Rules of Procedure, Immunities and Institutional Affairs

Challenge on procedural grounds of the still unratified credentials of the parliamentary delegation of Spain

Report¹

prepared by the Chairperson of the Committee

A. Opinion to the President of the Parliamentary Assembly²

1. On 24 June 2019, at the opening of the third part-session of the Parliamentary Assembly, the still unratified credentials of the Spanish parliamentary delegation were challenged on procedural grounds in accordance with Rule 7.1 of the Assembly's Rules of Procedure, on the ground that the delegation would comprise only members from the four main political parties represented in the Spanish Parliament and none of the small parties had been invited to appoint members, in breach of Rule 6.2.a of the Rules of Procedure which guarantees the principle of fair representation of political parties or groups.

2. At its meeting on 25 June 2019, the Committee on Rules of Procedure, Immunities and Institutional Affairs examined the objection raised. It noted the explanations provided by the Chairperson of the Spanish delegation, and notably the fact that the parliament had appointed a provisional delegation, which had seven vacant substitute seats, which will be filled as soon as possible, in compliance with Rule 6.2 of the Assembly's Rules of Procedure.

3. The Committee notes that the main political tendencies in the *Cortes Generales* are represented and the delegation comprises representatives of opposition parties. The fact that there are vacant seats in the Spanish delegation implies that members of certain political groups in the minority, currently not represented in the delegation, would be able to join it.

4. The Committee considers, in the light of Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure and also Assembly Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, and bearing in mind the assurances given by the Spanish Parliament to modify the composition of its delegation as soon as possible, that there are insufficient grounds not to ratify the credentials of the Spanish delegation.

5. The Committee therefore concludes that the credentials of the Spanish parliamentary delegation should be ratified.

¹ Reference to committee: Assembly decision of 24 June 2019

² Adopted unanimously by the committee on 25 June 2019

B. Explanatory memorandum

1. Introduction and relevant provisions of the rules

1. At the sitting of the Assembly on 24 June 2019, Sir Roger Gale (United Kingdom, EC) and several other members of the Assembly challenged the still unratified credentials of the Spanish national delegation to the Parliamentary Assembly on procedural grounds in accordance with Rule 7.1.b. of the Rules of Procedure, namely on the grounds that the composition of the delegation did not allow fair representation of the political parties or groups represented in the Spanish Parliament, as that delegation only comprised members from the four main political parties represented in Parliament and none of the small parties had been invited to submit candidatures. In accordance with Rule 7.2, the Assembly referred the credentials to the Committee on Rules of Procedure, Immunities and Institutional Affairs for report.

2. The principle whereby the composition of any delegation must reflect the composition of its parliament in terms of the parties represented is expressly laid down by Rule 6.2.a: "*Insofar as the number of their members allows, national delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments (...)*".

3. Failure to comply with that principle constitutes, under Rule 7.1.b of the Rules of Procedure, grounds for challenging a delegation's credentials: "*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 (...)*".

4. The Committee on Rules of Procedure, Immunities and Institutional Affairs must therefore examine whether the composition of the Spanish delegation is in breach of the principles laid down by Rule 6.2.a of the Assembly's Rules of Procedure. 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 Spanish parliamentary delegation with Rule 6.2 of the Assembly's Rules of Procedure

5. The Spanish Parliament presented the credentials of its new delegation following the parliamentary elections held on 28 April 2019.

2.1. Credentials of the members of the Spanish delegation transmitted on 19 June 2019

6. In accordance with Articles 25³ and 26 of the Statute of the Council of Europe, the Spanish parliamentary delegation comprises 12 representatives and 12 substitutes. The report by the President of the Assembly on the examination of credentials of representatives and substitutes for the third part of the 2019 ordinary session of the Assembly (Doc. 14913) mentions that the composition of the Spanish parliamentary delegation is as follows:

Representatives

Mr Jokin BILDARRATZ (PNV)
Mr José CEPEDA (PSOE)
Ms Olivia DELGADO (PSOE)
Mme Miren Eurne GORROTXATEGUI (Unidas Podemos)
Mr Antonio GUTIÉRREZ (PSOE)
Mr Rafael HERNANDO (Partido Popular)
Ms Belén HOYO (Partido Popular)
Ms Carmen LEYTE (Partido Popular)
Mr Gerardo PISARELLO (Unidas Podemos)
Ms Melisa RODRÍGUEZ HERNÁNDEZ (Ciudadanos)

³ Under Article 25 of the Statute of the Council of Europe, the members (representatives and substitutes) of the parliamentary delegations 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".

Mr Adolfo SUÁREZ (Partido Popular)
Mr José ZARAGOZA (PSOE)

Substitutes

Mr José Manuel BARREIRO (Partido Popular)
Ms Sofía HERNANZ (PSOE)
M. Juan José MATARÍ (Partido Popular)
Ms Patricia REYES (Ciudadanos)
Mr Felipe SICILIA (PSOE)

7. The credentials of the Spanish delegation were sent by letter to the President of the Parliamentary Assembly, dated 18 June 2019, informing the President that this was a provisional delegation and stating that: "(...) with a view to enhancing our commitment to the values of the Council of Europe and guaranteeing an adequate representation of our country in the important plenary sitting to take place from June 24 to 28, we have decided to appoint a provisional delegation which shall be modified in coming months. The lack of time has made us adopt this ad hoc decision. For this reason, credentials have been issued to re-elected MPs and to members of the Bureaus of both Chambers, so that vacancies are filled, bearing in mind the utmost relevance we attach to the Assembly you preside over."

8. Examination of these credentials of the Spanish delegation shows that there are seven vacant substitute seats. Furthermore, the letter transmitting the credentials points out that the procedure for appointing the delegation is based on a decision of the bureaus of the two chambers of parliament.

2.2. Evaluation

9. The form giving the composition of the Spanish delegation, signed by the Speaker of the Congress of Deputies and the Speaker of the Senate on 13 June 2019, shows that the representation of the political groups in the *Cortes Generales* (which comprises 600 seats) was as follows:

- Partido Socialista (majority): 259 seats
- Partido Popular (opposition): 131 seats
- Ciudadanos (opposition): 67 seats
- Unidas Podemos-En Comú Podem-Galicia en Común (opposition): 48 seats
- VOX (opposition): 24 seats
- Partido Nacionalista Vasco (EAJ-PNV) (opposition): 15 seats
- Grupo Parlamentario Republicano (opposition): 14 seats
- Grupo Parlamentario Mixto (opposition): 22 seats
- Esquerra Republicana + EHBildu: 14 seats
- Grupo Nacionalista Junts per Catalunya, Coalición Canaria, Partido Nacionalista Canario (opposition): 6 seats

10. It is clear from the information passed on by the Chairperson of the Spanish parliamentary delegation during her exchange of views with the Committee on 25 June 2019 that the composition of the delegation to the Assembly was decided by the bureaus of the two chambers of the *Cortes* in full compliance with the applicable rules and procedures.

11. The number of seats allocated to the Spanish parliamentary delegation – 24 members (12 representatives and as many substitutes) – should allow full representation of the greatest possible number of political tendencies in the Spanish Parliament, represented within the nine parliamentary groups formed following the last parliamentary elections.

12. That said, it should be pointed out that only five parliamentary groups of the nine in the parliament are represented, primarily the four main groups. Of the minority groups, only one is represented (the Basque Nationalist Party, by one member). Other groups, which have an equivalent number of elected members and each represent between 2% and 4% of elected parliamentarians, are not represented in the delegation. This is notably the case of the Vox parliamentary group, which is more representative and does not benefit from any representation in the Assembly.

3. Precedents in the Parliamentary Assembly concerning challenges to credentials based on Rule 7 of the Rules of Procedure and the rulings of the committee

13. The challenge to the credentials of the Spanish parliamentary delegation is clearly based on the fact that its composition would not meet the criterion of fair representation of political parties or groups laid down in the Rules of Procedure. In this connection, the Rules Committee obviously points to the "principles to be used to assess whether political parties or groups are fairly represented in national delegations to the Parliamentary Assembly", set out by the Assembly in 2011 (Resolution 1798).

14. There are a few precedents where the Assembly has been asked to take a position on a challenge to credentials on the ground of a lack of fair political representation of political parties or groups, and to which the Committee can refer here, in the present context:

– In October 2016, the still unratified credentials of the Serbian parliamentary delegation were challenged on the ground that the composition of the delegation did not allow fair representation of the political parties or groups represented in the Serbian Parliament. The Committee concluded that the credentials of the Serbian delegation should be ratified, given that the decision on the composition of interparliamentary delegations had been taken by the Serbian Parliament in compliance with its internal procedure, which was based on the pluralist functioning of parliament.⁴

– In January 2016, the still unratified credentials of the Moldovan parliamentary delegation were challenged on the ground that the incomplete composition of the delegation, as well as the absence of one of the main political parties from the delegation, did not allow fair representation of the political parties or groups represented in the Moldovan Parliament. The Committee proposed that the Assembly ratify the credentials of the Moldovan parliamentary delegation but provide for the automatic suspension of the voting rights of its members in the Assembly and its bodies if the composition of the delegation were not brought into conformity with Rule 6.2.a of the Rules of Procedure by the April 2016 part-session.⁵

– In January 2012, the still unratified credentials of the Ukrainian parliamentary delegation were challenged. The list of members of the Ukrainian delegation contained erroneous information in that three members were listed as members of the Yuliya Tymoshenko Bloc, when in fact they actually sat in the parliament under other political labels. Taking the view that the composition of the delegation did not violate the principle of fair representation of political parties or groups, the Committee concluded that its credentials should be ratified.⁶

– In January 2010, the Committee was asked to take a position on the challenge to the still unratified credentials of the Armenian parliamentary delegation, relating to the alleged under-representation of opposition parties or groups. The challenge claimed that the Armenian parliament had "manipulated its internal rules in order to exclude a member of the EPP group". The Committee concluded that the credentials should be ratified, insofar as the list of delegation members ensured a fair representation of the political groups in the Armenian National Assembly and included a representative and substitute belonging to the opposition.⁷

– In 1998 and 1999, the Rules Committee considered the composition of the special guest delegation of Armenia, as the main opposition party, accounting for 50 out of a total of 149 members of the Armenian parliament, had not been granted any of the delegation's four seats.⁸ The Rules Committee then concluded that "*a delegation which omitted from its ranks a representative of the main opposition faction could not be considered to reflect the various currents of opinion of that parliament*". It recommended that the Assembly ratify the special guest delegation's credentials "*on the condition that a seat would remain vacant for a representative [of the opposition]*".

15. In the examination of previous challenges to credentials, it was pointed out that the Assembly must, in principle, simply ensure that the main political currents present in a parliament are represented and, in particular, that the delegation includes opposition parties.⁹ It is this position that is reflected in the above-mentioned Assembly decisions and which has been enshrined among the principles to be used to assess

⁴ Opinion to the President of the Parliamentary Assembly, document AS/Pro (2016) 23 def

⁵ See Resolution 2092 (2016) and the report by the Committee on Rules of Procedure, Immunities and Institutional Affairs (Doc. 13962).

⁶ Opinion to the President of the Parliamentary Assembly, document AS/Pro (2012) 03 def.

⁷ Opinion to the President of the Parliamentary Assembly, document AS/Pro (2010) 06 def.

⁸ See reports transmitted to the Bureau, doc. AS/Pro (1998) 11 and AS/Pro (1999) 03.

⁹ Doc. 5497, paragraph 7; Doc. 6101, paragraph 11.

whether political parties or groups in national parliaments are fairly represented in the Parliamentary Assembly delegations, as laid down in Resolution 1798 (2011).

16. One of the principles for assessing the notion of fair representation of political parties or groups in national delegations to the Parliamentary Assembly states that *"both representatives and substitutes are taken into account when determining the political balance of a national delegation in order to assess "fair representation"*".

17. Accordingly, the existence of seven vacant substitute seats in the Spanish delegation implies that these should be filled by members of minority political groups currently not represented within the delegation.

18. In its Resolution 2126 (2016) on the nature of the mandate of members of the Parliamentary Assembly, the Assembly points out that *"notwithstanding the provisions of Rule 6 of its Rules of Procedure ensuring compliance with the principles of fair political representation and gender equality, the composition of national delegations and the appointment or replacement of their members are a matter for national parliaments, in accordance with their internal procedures. (...) The Assembly notes that, in the last few years, irregularities have occurred in Assembly delegations, often bringing to light gaps and shortcomings in the rules of procedure of the national parliaments concerned. In particular: the rules of procedure of national parliaments have sometimes been questioned for the way that they can serve as a legal front for measures imposing a disguised sanction founded on a political motive (...)"*.

4. Conclusions

19. The Committee on Rules of Procedure, Immunities and Institutional Affairs considered the credentials of the Spanish parliamentary delegation, which were challenged on the grounds that its composition did not comply with the provisions of Rule 6.2.a of the Rules of Procedure.

20. The Assembly has set specific criteria for assessing whether a national delegation to the Assembly ensures a fair representation of the political parties or groups existing in the national parliament concerned, as laid down by Resolution 1798 (2011).

21. At its meeting on 25 June 2019, the Committee on Rules of Procedure took note of the assurances given by the Spanish Parliament that it would promptly fill the vacant seats in keeping with the principles laid down by the Assembly. In accordance with Rule 10.1 of the Rules of Procedure,¹⁰ it considered that the credentials of the Spanish parliamentary delegation were in accordance with Article 25 of the Statute of the Council of Europe and that the composition of the delegation was in keeping with the principles set forth in Rule 6.2 of the Assembly's Rules of Procedure. It therefore decided that the credentials of the Spanish parliamentary delegation could be ratified.

¹⁰ "Reports submitted to the Assembly (...) under Rules 7.2. (...) shall contain a draft resolution proposing in its operative part one of the following three options:

10.1.a. ratification of the credentials, or confirmation of ratification of the credentials;

10.1.b. non-ratification of the credentials, or annulment of ratification of the credentials;

10.1.c. ratification of the credentials, or confirmation of ratification of the credentials together with depriving or suspending 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."