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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 the Republic of Moldova

Report¹

prepared by the Chairperson of the Committee

A. Opinion to the President of the Parliamentary Assembly²

1. On 27 January 2020, at the opening of the Parliamentary Assembly session, the still unratified credentials of the parliamentary delegation of the Republic of Moldova were challenged on procedural grounds, in accordance with Rule 7.1 of the Assembly's Rules of Procedure, namely on the grounds that the Șor party, unlike the other parties in the Moldovan Parliament, was not represented.
2. At its meeting on 28 January 2020, the Committee on Rules of Procedure, Immunities and Institutional Affairs examined the objections raised. It noted that the parliamentary opposition held a substantial majority of seats on the delegation, with the three main opposition factions occupying six of the nine seats available, and that one vacant substitute's seat was, in principle, allocated to the Șor party.
3. It is clear from the information provided to the Committee that the Șor party refused to designate its member in the delegation to the Parliamentary Assembly on the ground that it demands to be allocated one representative's seat and one substitute's seat. The fact that a political party in opposition has not submitted a candidature to the seat it is supposed to fill on the Moldovan delegation should not be taken as a violation of the principle of fair representation of political groups within the Moldovan delegation.
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, as well as its Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, that there are not sufficient grounds for not ratifying the credentials of the Moldovan delegation.
5. The committee therefore concludes that the credentials of the Moldovan parliamentary delegation should be ratified.

¹ Reference to committee: Assembly decision of 27 January 2020

² Unanimously adopted by the committee on 28 January 2020

B. Explanatory memorandum

1. Introduction

1. On 27 January 2020, at the opening of the Parliamentary Assembly session, Mr Liddell-Grainger (United Kingdom, EC/DA), backed by at least ten other members belonging to five national delegations, challenged the still unratified credentials of the Moldovan parliamentary delegation to the Parliamentary Assembly on procedural grounds, in accordance with Rule 7.1.b. of the Assembly's Rules of Procedure, on the ground that all the parties in the Moldovan Parliament were represented in the delegation, except the Șor party, which had been deliberately left out of the delegation and which parliament refused to grant a place, notwithstanding the fact that a substitute's seat was free in the delegation. 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 Moldovan 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 Moldovan parliamentary delegation with Rule 6 of the Assembly's Rules of Procedure

5. In accordance with Articles 25³ and 26 of the Statute of the Council of Europe, the Moldovan parliamentary delegation comprises five representatives and five substitutes.

2.1. The Moldovan delegation's credentials sent on 15 January 2020

6. The Moldovan delegation's credentials were sent to the President of the Parliamentary Assembly on 14 January 2020.

7. The report by the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 ordinary session of the Assembly (Doc. 15039 rev) mentions that the composition of the Moldovan parliamentary delegation is as follows:

Representatives

Mr Vlad BATRINCEA (Socialist Party)
Mr Andrian CANDU (Democratic Party)
Ms Doina GHERMAN (ACUM Bloc PAS)
Mr Gaik VARTANEAN (Socialist Party)
Mr Liviu VOVC (ACUM Bloc DA)

³ According to Article 25 of the Statute of the Council of Europe, the members (representatives and substitutes) of parliamentary delegations are "*elected by its Parliament from among the members thereof, or appointed from among the members of that Parliament, in such manner as it shall decide*".

Substitutes

Mr Vladimir CEBOTARI (Democratic Party)
 Ms Inga GRIGORIU (ACUM Bloc DA)
 Mr Mihail POPSOI (ACUM Bloc PAS)
 Ms Adela RĂILEANU (Socialist Party)
ZZ...

2.2. Assessment

8. The form transmitting the composition of the Moldovan delegation, signed by the Speaker of Parliament, Ms Zinaida Greceanii, shows that the representation of the political groups in the Moldovan Parliament (which comprises 101 seats) was configured as follows:

- Socialist Party of the Republic of Moldova faction, comprising 36 deputies (belonging to the majority)
- Democratic Party of Moldova faction, comprising 30 deputies (belonging to the opposition – the Moldovan Parliament website mentions representation of 29 deputies)
- Action and Solidarity Party / ACUM bloc, comprising 14 deputies (belonging to the opposition)
- ACUM Dignity and Truth Platform, comprising 11 deputies (belonging to the opposition)
- the Șor party faction, comprising 7 deputies (belonging to the opposition),

as well as 3 non-affiliated deputies.

9. The parliamentary opposition holds a substantial majority of seats on the delegation (the party in power has only one third of the delegation's seats while the three main opposition factions hold two thirds). One substitute's seat has not been filled and is, in principle, allocated to the Șor party.

10. It is clear from the information provided to the President of the Parliamentary Assembly by the Șor party itself, in a letter dated 24 January 2020, that the Șor party refused to designate its member in the delegation to the Parliamentary Assembly on the ground that it demands to be allocated one representative's seat and one substitute's seat, claiming that a substitute member should not replace a representative of a party other than their own.

11. It is to be noted that, last year, in the delegation formed following the parliamentary elections of 24 February 2019, one representative's seat and one substitute's seat had been left vacant on the delegation and not filled at all during the 2019 session, without this prompting any challenge in the Assembly during the June 2019 part-session.

12. It is not for the committee, in the context of the present report, to examine in detail the complex political context prevailing in Moldova, against a backdrop of scandals involving corruption and banking fraud and related prosecutions, which is certainly not unconnected to the present challenge to credentials.

13. The challenge to the credentials of the Moldovan parliamentary delegation is 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 Committee on Rules of Procedure will no doubt also refer to the "principles to be used to assess the concept of fair representation of political parties or groups in national delegations to the Parliamentary Assembly", established by the Assembly in 2011.⁴

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

14. There are a few precedents where the Assembly has been asked to rule 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

⁴ See Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, which comprises a series of 12 principles to be used to assess whether political parties or groups are fairly represented in national delegations to the Assembly.

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.⁵

– 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.⁶

– 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.⁷

– 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.⁸

– 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.⁹ 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 has to avoid any interference in the internal political affairs of a member State. It must, in principle, simply ensure that the main political currents present in a parliament are represented and, in particular, that the delegation includes representation of opposition parties.¹⁰ 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 whether political parties or groups in national parliaments are fairly represented in the Parliamentary Assembly delegations, as laid down in Resolution 1798 (2011).

16. As for the objection raised regarding the incomplete composition of the Moldovan delegation, it is not for the Committee on Rules of Procedure to analyse the political or party-political reasons for this state of affairs, which is an internal matter for the Moldovan Parliament, insofar as there is no indication that the delegation's appointment has not complied with the regulatory procedure. It is precisely because the formalities have been observed that one substitute's seat has remained vacant.

17. Finally, it should be noted that 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"*".

⁵ Opinion to the President of the Parliamentary Assembly, document AS/Pro (2016) 23 def

⁶ See Resolution 2092 (2016) and the report by the Committee on Rules of Procedure, Immunities and Institutional Affairs (Doc. 13962).

⁷ Opinion to the President of the Parliamentary Assembly, document AS/Pro (2012) 03 def.

⁸ Opinion to the President of the Parliamentary Assembly, document AS/Pro (2010) 06 def.

⁹ See reports transmitted to the Bureau, doc. AS/Pro (1998) 11 and AS/Pro (1999) 03.

¹⁰ Doc. 5497, paragraph 7; Doc. 6101, paragraph 11.

4. Conclusions

18. There is nothing to indicate that the principles guaranteed by Rule 6.2 of the Assembly's Rules of Procedure have not been respected by the Moldovan Parliament. It is quite clear that the majority in power is in a minority within the delegation (with 3 seats, 2 of them for representatives) and that the three main opposition parties have 6 seats between them (of which 3 are representatives' seats). The Moldovan Parliament cannot be accused, therefore, of violating the opposition's rights.

19. Nor has the Moldovan Parliament failed to comply with the requirements laid down by the Assembly's Rules of Procedure in Rule 6.2, as one substitute's seat remains vacant, and assigned to the Şor party, which is not represented. The composition of the Moldovan parliamentary delegation will have to be finalised as soon as possible, but that depends not so much on the will of the Moldovan Parliament as the willingness of the Şor party, which should submit a candidature to the seat that it is supposed to fill. The Şor party's refusal to put forward a candidature is down to a political choice specific to that party, which is without doubt calculated.

20. The committee should carefully consider whether, in the political context to the challenge to credentials, it can really propose that the Assembly ratify the credentials of the Moldovan parliamentary delegation stipulating, as per what is now a classic formula, that some of the rights of participation and representation will be automatically suspended if, by the April 2020 part-session at the latest, the delegation's composition has not been brought into line with Rule 6.2.a of the Rules of Procedure and new credentials submitted, with respect to the appointment of a member to the vacant seat. Were the Committee to take such a decision, it would put the Şor party in a strong position vis-à-vis the other parties, enabling it to block the process until the sanction becomes effective.

21. At its meeting on 28 January 2020, following an exchange of views, and after hearing the chairperson of the Moldovan parliamentary delegation, the Committee on Rules of Procedure considered, in accordance with Rule 10.1 of the Rules of Procedure, that the credentials of the delegation should be ratified. The credentials of the Moldovan parliamentary delegation conform to Article 25 of the Statute of the Council of Europe; the composition of the delegation does not undermine the fair representation of political parties and groups and complies with the principles set out in Rule 6.2 of the Assembly's Rules of Procedure.

22. The fact that a political party in opposition has not submitted a candidature for the seat it was supposed to fill on the Moldovan delegation should not be taken as a violation of the principle of fair representation of political groups within the delegation.

23. The committee considers that it is in the interest of Council of Europe member state parliaments to fill, as soon as possible, all the representatives' and substitutes' seats allocated to them under Article 25 of the Statute. This is especially important for countries which are under a monitoring procedure, so as to ensure that the political spectrum of national political representation, including notably the opposition parties, is fully reflected in the parliamentary delegations concerned. The political parties represented in the Moldovan Parliament must therefore ensure that internal politicking does not interfere with the proper functioning of the Assembly.