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The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008)

Committee Opinion[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Mr John GREENWAY, United Kingdom

A. Committee's conclusions

The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the proposal in the report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe on the implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008) (Doc. 11786), in so far as it recommends suspending the voting rights of the members of the Armenian delegation, and the proposals contained in the addendum to the report, comply with the Assembly's Rules of Procedure and the Statute of the Council of Europe.

1. Introduction

1. On 17 December 2008, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) approved a report on the implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008) (Doc. 11786) and adopted a draft resolution, in which it recommended suspending "the voting rights of the members of the Armenian parliamentary delegation to the Assembly, under Rule 9, paragraphs 3 and 4.*c*, of the Rules of Procedure, until the Armenian authorities have clearly demonstrated their political will to resolve the issue of persons deprived of their liberty in relation to the events of 1 and 2 March 2008, in line with its demands (…)." This report is included on the agenda for the January 2009 part-session.

2. At its meeting on 9 January 2009, the Bureau decided to ask the Committee on Rules of Procedure, Immunities and Institutional Affairs to prepare an opinion in accordance with Rule 9.3 of the Assembly's Rules of Procedure.

3. The Committee on Rules of Procedure must therefore consider in this opinion whether the proposal put forward by the Monitoring Committee in its report complies with the Rules of Procedure, in particular Rule 9, and with the Statute of the Council of Europe.

4. It will be remembered that at the October 2008 part-session, the Assembly, for the first time in its history, considered a motion to challenge previously ratified credentials on substantive grounds (specifically those of the Russian parliamentary delegation), in accordance with the procedure set out in Rules 9.1.*a* and 9.2, that is, the initiative was taken by members of the Assembly. As the motion set a precedent, the Committee on Rules of Procedure, having been asked to give an opinion, wished to clarify certain aspects of the implementation of the procedure provided for under Rule 9, particularly as regards the requirements relating to the motion's admissibility and grounds: "as the procedure in question is of major political importance and needs to be conducted with rigour because of its implications, it cannot be used as a mere means of exerting pressure for purely tactical reasons" (see Doc. 11728). It will also be remembered that the

1. See Doc. 11786 and Doc. 11786 addendum submitted by the Monitoring Committee.

consideration of this motion prompted questions among the Assembly's members, the matter having been referred to the Committee on Rules of Procedure, and the latter had to clarify these points,[2] which it will discuss further in a report being prepared on amendments to various provisions of the Rules of Procedure.

5. The challenge made in the report submitted by the Monitoring Committee on Armenia's implementation of Assembly Resolutions 1609 (2008) and 1620 (2008) also sets a precedent, since Rule 9 is implemented for the first time on its initiative, as provided for in Rule 9.1.*b,* following clear procedures which this time should not give rise to any controversy.[3]

2. Consideration of the Monitoring Committee's proposal

6. The Committee on Rules of Procedure examined the report adopted by the Monitoring Committee and discussed whether the draft resolution it contained – in particular paragraph 9 – complied with the Assembly's Rules of Procedure and the Statute of the Council of Europe. Since the publication of the aforementioned report, the Monitoring Committee has prepared an addendum on "recent developments", through which it provides an update on progress made concerning the implementation by Armenia of Resolutions 1609 (2008) and 1620 (2008), in particular concerning the release of political prisoners. It also includes six amendments, one of which refers to the proposal to suspend the voting rights of the Armenian delegation (paragraph 9 of the draft resolution contained in Doc. 11786). On the basis of the addendum and the amendments proposed, the Assembly will have to make its judgment concerning the voting rights.

2.1. Regulatory basis for the challenging of credentials

7. Rules 8 and 9 provide for the possibility of penalising a national parliamentary delegation. In the present instance, the Assembly has to consider penalising the Armenian delegation on the basis of the report submitted by the Monitoring Committee as part of its general mandate to monitor member states' obligations and commitments (Resolution 1115 (1997) as amended).

8. Rule 9.1.*b* provides that "the Assembly may reconsider ratified credentials of a national delegation as a whole (…) on the basis of a report by the Monitoring Committee containing a text which recommends that the credentials be reconsidered", and Rule 9.3 that "the Monitoring Committee may, in a report foreseen on the agenda of the Assembly (…) call into question the credentials of a national delegation (…)".

9. As this procedure falls within the context of the periodic monitoring of obligations and commitments, the proposed penalty must be justified by Armenia's persistent failure to honour its obligations and commitments or its lack of co-operation in the monitoring process.[4]

10. It is worth noting that, while Rule 9.1.*a* (challenging of credentials on the basis of a motion for a resolution tabled by Assembly members) expressly mentions the grounds set out in Rule 8.2 – serious violation of the basic principles of the Council of Europe mentioned in Article 3[5] of, and the Preamble to, the Statute; or persistent failure to honour obligations and commitments and lack of co-operation in the Assembly's monitoring procedure –, Rule 9.1.*b* (challenge on the basis of a report by the Monitoring Committee) does not include any such reference. The principles according to which a penalty may be justified on the Monitoring Committee's initiative are set out in the latter's terms of reference, as established by the amended Resolution 1115 (1997).

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2. These questions mainly related to the possibility of withdrawing a signature from the motion for a resolution or withdrawing the motion in its entirety. See letter of 29 September 2008 from the Chair of the Committee on Rules of Procedure to the President of the Assembly, and the verbatim report of the sitting, AS (2008) CR 28, page 4.

3. Apart from the reconsideration of the Russian delegation's previously ratified credentials on substantive grounds, referred to the Monitoring Committee at the October 2008 part-session (Doc. 11726) following a motion for a resolution referred to it for report (Rule 9.1.*a*), only one such case had previously been referred to the Monitoring Committee, when the credentials of the delegation of Azerbaijan were challenged on substantive grounds at the opening of the first part-session in January 2006, in application of Rule 8 (Doc. 10807 rev.). In both cases, the initiative came from Assembly members, not from the Monitoring Committee itself.

4. See Resolution 1115 (1997), paragraph 12, which mentions the possibility of "penalis[ing] persistent failure to honour obligations and commitments accepted, and lack of co-operation in its monitoring process, by adopting a resolution and/or a recommendation, by the non-ratification of the credentials of a national parliamentary delegation at the beginning of its next ordinary session or by the annulment of ratified credentials in the course of the same ordinary session in accordance with [Rules 6 to 9] of the Rules of Procedure".

5. The provisions of the Statute of the Council of Europe relating to the procedure for penalising member states under Article 8 refer to a serious violation of Article 3 (acceptance of "the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms").

2.2. Compliance of the Monitoring Committee's proposal with the Rules of Procedure

11. Rule 9.4 states that a report submitted to the Assembly shall contain a draft resolution proposing in its operative part:

– confirmation of the ratification of the credentials;

– annulment of the ratification of the credentials;

– confirmation of the 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.

12. In the draft resolution contained in its report of December 2008 (Doc. 11786) the Monitoring Committee proposes "to suspend the voting rights of the members of the Armenian parliamentary delegation (…) until the Armenian authorities have clearly demonstrated their political will to resolve the issue of persons deprived of their liberty in relation to the events of 1 and 2 March 2008 (...)".

13. Where penalties are proposed as part of the monitoring of obligations and commitments, this is the final stage in an ongoing process of dialogue with the state concerned. In the present instance, it will also be noted that the Assembly issued a clear warning to the Armenian authorities in Resolution 1620 (2008), and envisaged suspending the voting rights of the delegation's members if the requirements laid down were not fulfilled by the January 2009 part-session.

14. As regards the grounds and justification for the proposed penalty, the report of December 2008, including the draft resolution, submitted detailed explanations and sufficient grounds relating to politically motivated charges and detention and the existence of political prisoners (see, in particular, paragraphs 4 and 5 of the draft resolution). The Committee on Rules of Procedure finds that this requirement is satisfied.[6]

15. The Committee on Rules of Procedure may also assess the proportionality of the proposed penalty in relation to the seriousness of Armenia's failure to honour its obligations and commitments. In the light of the information in the report submitted by the Monitoring Committee (see Chapter II, Implementation of Assembly requirements), the Committee on Rules of Procedure considers that the proposed measure is proportional to the seriousness of the grounds on which it is based and to Armenia's breaches of its obligations and commitments. The committee also considers that the proposals included in the addendum to the Monitoring Committee's report are proportional.

3. Other issues relating to the application of the Rules of Procedure concerning the reconsideration of a parliamentary delegation's credentials

16. The Monitoring Committee's initiative to seize the Assembly under Rule 9 for the purpose of reconsidering the Armenian delegation's previously ratified credentials sets a precedent. In the light of previous debates on the challenging of a delegation's credentials, the committee wishes to raise two issues relating to the application of the Rules of Procedure that it regards as problematic. Moreover, having regard to the recent developments in Armenia, as set out in the addendum to the report of the Monitoring Committee of December 2008, it might be helpful for the Rules Committee to confirm that the addendum and the proposal it contains do not raise any problems under the Rules of Procedure.

3.1. Application of Rule 34 on amendments, and limitation of the right to move an amendment on the grounds that it is out of order

17. Rule 9.4.*c*. states that the provisions on amendments (Rule 34) shall apply. In the event that a delegation's credentials are challenged, the interpretation of Rule 34.3 may be problematic ("An amendment which would tend to delete, replace or render inoperative the whole of a draft text is not in order").

18. Accordingly, on 6 April 2000, during a debate on the challenging of the Russian delegation's credentials on substantive grounds (Rule 8), the President of the Assembly ruled that amendments aiming at a result which could be achieved by voting against the draft text were out of order.[7] This precedent does not cover every possible scenario, however. An amendment proposing not to ratify credentials or to annul them would

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6. In its opinion on the motion challenging the Russian parliamentary delegation's credentials (Doc. 11728), the Rules Committee has recommended that "when a motion is tabled according to Rule 9.1, the authors should cite evidence for the serious violation mentioned in Rule 8.2. Any motion to challenge a delegation's credentials on the basis of Rule 9 must be properly substantiated."

be out of order if the draft resolution proposed to ratify or confirm them; conversely, an amendment proposing to ratify or confirm credentials would be out of order if the draft resolution proposed not to ratify them, to annul them, or to suspend the exercise of certain rights.[8]

19. In the present case – reconsideration of the Armenian delegation's previously ratified credentials – it is a matter of establishing which amendments would be deemed in or out of order, including those submitted to the Assembly by the Monitoring Committee itself:

– would an amendment replacing the suspension of voting rights proposed by the Monitoring Committee in paragraph 9 with one of the other two proposals listed under Rule 4 (in this case, annulment of the ratification of credentials, or confirmation of the ratification of credentials without any accompanying measures) be in order?

– would an amendment suppressing the proposed sanction without replacing it with one of the two others measures contained in Rule 9.4 be in order?

20. Indeed, the question arises as to whether or not Rule 34.3 is applicable to a draft resolution submitted by the Monitoring Committee in relation to the honouring of a given state's obligations and commitments, which includes a whole series of measures and recommendations. To what extent would an amendment concerning the proposed penalty tend to render the whole of the draft text inoperative? What latitude do Assembly members have? What latitude does the Monitoring Committee itself have in amending its own text?

21. Since it initiated the procedure under Rule 9, the Monitoring Committee is required to propose one of the three recommendations referred to in Rule 9.4.

22. Before amendments are tabled, Assembly members clearly ought to be informed of the grounds on which they may be ruled out of order. The Rules of Procedure need to be clarified.[9]

3.2. Interpretation of the final vote

23. During the debate at the October 2008 part-session on the draft resolution on the Russian delegation's credentials, which contained a proposal to ratify them, the President of the Assembly sought to clarify the meaning of the vote, stating that "voting in favour means confirming the ratification of the credentials of the Russian delegation; voting against means rejecting the confirmation of ratification, which is tantamount to annulment of credentials" (see verbatim report of the sitting, AS (2008) CR 33, page 32). The same interpretation had prevailed during the aforementioned debate at the April 2000 part-session on the challenging of the Russian delegation's credentials (the amended draft resolution proposed to ratify the Russian members' credentials but suspend their voting rights), with the President stating that "to vote 'Yes' means to vote again in favour of Amendment No. 1, which says: 'The Assembly decides to ratify the credentials of the delegation of the Russian Federation, but to deprive the members of the delegation of their voting rights in the Assembly (…)'. If you vote 'No', you are voting against that. Voting 'No' in effect is non-ratification" (see AS (2000) CR 15, page 44).[10]

24. The two aforementioned precedents, concerning the right of amendment and the interpretation of the final vote, can only function in combination. The Rules of Procedure themselves, however, say nothing about these issues, which are crucial given the implications of the procedure under discussion. Since the Rules of Procedure do not contain an express provision stating that any rejection of the committee's conclusions by the Assembly should be regarded as adoption of the contrary decision, it cannot be assumed in the present

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7. See the verbatim report of the sitting, AS (2000) CR 15. The draft resolution invited the Assembly to ratify the new Russian delegation's credentials; the amendment at issue proposed not to ratify them.

8. An amendment that supplements rather than modifies the proposed option (ratification/non-ratification) is therefore in order. For reference purposes, see the aforementioned debate on the challenging of the still unratified credentials of the Russian Federation's parliamentary delegation (Doc. 8698 and verbatim report of the sitting, AS (2000) CR 15, 6 April 2000) and the debate on the challenging of the still unratified credentials of the parliamentary delegation of Azerbaijan on substantive grounds (Doc. 10807 and verbatim report of the 5th session, AS (2006) CR 05, 25 January 2006).

9. The issue shall be raised for any draft resolution presented by the Monitoring Committee in the framework of a regular report on the monitoring of obligations and commitments: to what extent could a penalty not mentioned in a draft resolution submitted by the Monitoring Committee be proposed by means of an amendment?

10. This also applies to the consideration of proposals to waive an Assembly member's parliamentary immunity. See Rule 65.3, and the report on immunities of members of the Parliamentary Assembly (Doc. 9718 rev.): "Given that the draft resolution forming part of the committee's report will conclude with retaining or waiving the immunity, no amendment should be permitted to that conclusion. Accordingly, where the Assembly rejects the committee's proposal, the contrary decision should be deemed to have been adopted. Any amendments to the other paragraphs of the draft resolution should, of course, be admissible." (paragraph 77).

instance that, if the proposal in the draft resolution – confirmation of ratification and suspension of voting rights – were rejected, the contrary decision (annulment of credentials) would be deemed to have been adopted, since this is a report on the monitoring of obligations and commitments, of which the proposed penalty is the conclusion rather than the subject (unlike a report strictly confined to the challenging or reconsideration of a delegation's credentials under Rules 8 and 9).

25. The aforementioned precedents cannot be applied to the discussion of a report submitted by the Monitoring Committee, given the specificity of its mandate and the procedure followed as set up in Resolution 1115 (1997). The Rules should therefore be applied with room for flexibility.

26. In respect of a delegation's credentials, establishing whether tabled amendments are in or out of order and interpreting the meaning of the vote are important issues, which the committee may clarify in the report being prepared on amendments to various provisions of the Rules of Procedure.

4. Concluding remarks

27. The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the draft resolution in the report submitted by the Monitoring Committee (Doc. 11786) satisfies the requirements of Rule 9 and complies with the Assembly's Rules of Procedure and the Statute of the Council of Europe.

28. On 26 January 2009, the Monitoring Committee has approved an addendum to its report of December 2008 setting out the progress on the critical question of the release of political prisoners in Armenia. The Assembly will have to make a judgment as to whether this will justify not suspending the voting rights of the Armenian delegation after all.

29. In addition, in so far as the Monitoring Committee's initiative to seize the Assembly under Rule 9.1.*b* sets a new precedent – three months after the first motion under Rule 9.1.*a* was tabled in the Assembly –, and in the light of the debates within both the Bureau of the Assembly and the Assembly itself in 2008, the Committee on Rules of Procedure considers that it is within its remit to discuss the issues raised in relation to the interpretation of the Rules of Procedure and the clarification of certain provisions.

30. At the end of the October 2008 part-session, the Bureau of the Assembly asked the committee to prepare a report proposing amendments to the Assembly's Rules of Procedure, in particular as regards the procedure under Rule 8 for the challenging of still unratified credentials on substantive grounds and the procedure under Rule 9 for the reconsideration of previously ratified credentials on substantive grounds. This is therefore the context in which the committee will continue its discussions and make any relevant proposals for revising the Rules of Procedure.

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

Committee seized for opinion: Committee on Rules of Procedure, Immunities and Institutional Affairs.

Reference to committee: Reference No. 3496 of 28 November 2008.

Opinion unanimously approved on 26 January 2009.

Secretariat of the committee: Mr Heinrich, Mrs Clamer.