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

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

Summary

On 28 September 2009, at the opening of the part-session, the still unratified credentials of the parliamentary delegation of Moldova were challenged on procedural grounds (Rule 7 of the Assembly's Rules of Procedure), on the grounds that its composition did not comply with the principles set out in Rule 6.2 of the Rules of Procedure to the effect that national parliamentary delegations must be composed so as to ensure a fair representation of the political parties or groups in their parliaments.

In accordance with the Rules of Procedure of the Assembly, these credentials were referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs. The Committee proposes that the Assembly should ratify the credentials of the parliamentary delegation of Moldova.

1. Reference to committee: Decision of the Assembly on 28 September 2009, Rule 7.2.

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A. Draft resolution

1. On 28 September 2009, at the opening of the part-session, the still unratified credentials of the parliamentary delegation of Moldova were challenged on procedural grounds (Rule 7 of the Assembly's Rules of Procedure), on the grounds that its composition did not comply with the principles set out in Rule 6.2 of the Rules of Procedure to the effect that national parliamentary delegations must be composed so as to ensure a fair representation of the political parties or groups in their parliaments.

2. The Parliamentary Assembly has examined the objection made and found that the appointment of the Moldovan delegation to the Parliamentary Assembly was effected in compliance with Rule 6 of the Assembly's Rules of Procedure.

3. The Assembly decides therefore to ratify the credentials of the parliamentary delegation of Moldova.

4. It invites the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), under its dialogue with the Moldovan authorities, to ensure that the Moldovan Parliament is properly informed of the requirements set out in the Rules of Procedure of the Parliamentary Assembly and that it will take due account of them in the subsequent changes made to the composition of its delegation to the Parliamentary Assembly.

5. Furthermore, it invites the Monitoring Committee to ask its co-rapporteurs for Moldova to ask the relevant Moldovan parliamentary authorities, as a matter of urgency, to specify their intentions in regard to the four vacant seats for substitutes on the Moldovan delegation.

B. Explanatory memorandum by Mr John Greenway, rapporteur

1. Introduction

1. At the Assembly's opening sitting on 28 September 2009, Mr Kox (The Netherlands, UEL) challenged the still unratified credentials of the delegation of Moldova to the Parliamentary Assembly on procedural grounds (Rule 7.1.*b*. of the Rules of Procedure). 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. This draft report will consider whether the procedure for appointing the Moldovan delegation respected the provisions set out in Rule 7.1.*b*, of the Assembly's Rules of Procedure.

2. Conformity of the composition of the Moldovan parliamentary delegation with Rule 7 of the Assembly's Rules of Procedure

3. Rule 7.1.b. of the Assembly Rules of Procedure states that "Credentials may be challenged by any member of the Assembly present in the Chamber 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 and should include in any case one representative of each sex".

4. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the Moldovan parliamentary delegation comprises five representatives and five substitutes. The report by the President of the Assembly on the examination of credentials of Representatives and Substitutes for the fourth part of the 2009 Ordinary Session of the Assembly (Doc. 12027) mentions that following the parliamentary elections in April and July 2009, the composition of the Moldovan parliamentary delegation is as follows:

Representatives

– Mrs Ana GUŢU (Liberal Party of Moldova)

– Mr Vitalie NAGACEVSCHI (Liberal Democratic Party of Moldova)

– Mr Vladimir ŢURCAN (Communist Party of the Republic of Moldova)

– Mr Veaceslav UNTILĂ (Alliance "Moldova Nostra")

– Mr Vladimir VORONIN (Communist Party of the Republic of Moldova)

Substitute

– Mrs Stela JANTUAN (Democratic Party of Moldova)

5. Clearly, the challenge to the credentials of the Moldovan delegation is based not on a misreading of the provision on equal representation of the sexes – since the current delegation comprises four men and two women i.e. at least one representative of each sex, in accordance with the provisions of Rule 6.2.a, second sentence, of the Rules of Procedure – but on an alleged imbalance in its political representation.

6. In his letter of 25 September 2009 to the President of the Assembly transmitting the composition of the new delegation, the President of the Moldovan Parliament, Mr Mihai Ghimpu, specified that the delegation was appointed on the basis of *a political agreement, after lengthy consultations with all the parliamentary groups,* and that *the four vacancies in the delegation will be filled at a later date in agreement with the political groups in parliament.*

7. The Chair of the Committee on Rules of Procedure was sent a letter by three members of the outgoing Moldovan parliamentary delegation, namely Ms Postoico, Mr Petrenco and Mr Turcan (the latter remaining in the new delegation). They opined in particular that the decision taken by the Moldovan Parliament to appoint a delegation which was incomplete, since four substitute seats had not been filled, and provisional, in order to enable Moldovan parliamentarians to attend the present part-session, was contrary to Rule 6 of the Rules of Procedure of the Parliamentary Assembly and Article 6 (1) of the Statutes of the Moldovan Parliament. The latter provides that parliamentary delegations must be formed from the parliamentary groups on the basis of proportional representation.

8. At its meeting on 29 September 2009, the Committee on Rules of Procedure had an exchange of views with the Chairperson of the Moldovan delegation, Mrs Gutu, who expressed the view that the new Moldovan delegation was in order. In reply to questions, she indicated that the credentials of a complete delegation will be presented in time for the opening of the 2010 Assembly session.

9. The Committee does not intend, in this report, to go back over the current situation of political transition in Moldova, for which it would explicitly refer the reader to the reports presented during the present part-session on the subject[2]. We might just recall that the Communist Party of Moldova, now in the opposition, holds 48 seats in Parliament out of the total of 101, while the Liberal Democratic Party of Moldova (LDPM), the Liberal Party (LP), the Democratic Party (DP) and the Alliance "Moldova Nostra" (AMN) managed to secure altogether 53 seats (distributed as follows: LDPM: 18 seats, LP: 15 seats, DP: 13 seats, AMN: 7 seats).

10. There are very few precedents for the Assembly pronouncing on similar cases, to which the Committee might refer here[3].

11. For instance, in 1998 and 1999, the Committee on Rules of Procedure pronounced on the composition of the Armenian special guest delegation, where the main opposition party in Parliament, holding 50 seats out of a total of 149, had not been given any of the four seats on the delegation.[4] The Committee 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 credentials of the special delegation of Armenia *"subject to one seat of the delegation remaining vacant for a representative of the* [opposition]*"*.

12. There is nothing to suggest that the principles guaranteed by Rule 7.1 of the Assembly's Rules of Procedure have not been respected by the Moldovan Parliament. By granting the Communist Party two representatives' seats out of the five to be filled, the Moldovan Parliament has complied with the requirements of Rule 6.2 of the Assembly's Rules of Procedure.

13. The Committee recalls its longstanding position according to which "the rigorous representation of all political forces can never be ensured in member parliaments, which have a limited number of seats in the Assembly […] and possess more political groups than there are seats to be filled"[5]. It is for this reason that Rule 6.2.a. stipulates that national delegations should be composed so as to ensure a fair representation of political parties "insofar as the number of their members allows".

14. As regards the objection that the composition of the Moldovan delegation is incomplete, the Committee has to point out that there is no rule requiring the credentials of a complete delegation to be remitted. Indeed, the Statute of the Council of Europe stipulates, in Article 25 c, that "*Each Representative may have a Substitute*". Furthermore, it is by no means an exceptional situation, and the Assembly has ratified the credentials of incomplete delegations on several occasions[6]. It is not for the Committee on Rules of Procedure to analyse the reasons for this situation, which is an internal matter for the Moldovan parliament. The Committee emphatically stresses, however, that any future change in the composition of the Moldovan parliamentary delegation must comply fully with the principle set out in Rule 6.2.*a* of the Assembly's Rules of Procedure.

15. Whilst noting that occasionally some national parliaments do not fill all their seats of representatives and substitutes in the delegations to the Parliamentary Assembly, the Committee expresses its concern that the parliaments of the Council of Europe member states should, whenever possible, take up all seats of

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2. "Observation of the early parliamentary elections in Moldova", report of the Ad hoc Committee of the Bureau (Doc.12009); "The functioning of democratic institutions in Moldova: implementation of Resolution 1666 (2009)", report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Doc. 12011).

3. For example, in January 1998, the Parliamentary Assembly pronounced on a challenge for procedural grounds to the credentials of the Turkish parliamentary delegation, on the grounds that it did not comprise a sufficient number of parliamentarians of Kurdish origin. The Assembly held that *"the ethnic origin of the parliamentarians was not relevant for the purposes of Rule 6.*"

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

5. See report on the designation of national delegations to the Parliamentary Assembly, 1996, rapporteur: Mr Schieder (Doc. 7627).

6. See, for example, the credentials presented at the opening of the Assembly's 2009 session, showing five vacant representatives' seats and eight vacant substitutes' seats for Romania (Doc. 11792).

representatives and substitutes available to them according to Article 25 of the Statute. This is particularly important for countries under monitoring and would also ensure that there would be full representation from opposition parties on the respective delegations.

16. The Committee would also be concerned if any delegation did not take its whole quota of seats on the Assembly for budgetary reasons. The Committee recalls that it will continue to monitor the attendance of national delegations at Assembly sessions and committee meetings and analyse the reasons of poor attendance, in the framework of the follow-up to Resolution 1583 (2008).

3. Conclusions

17. Having examined the objections raised in this case, the Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the composition of the Moldovan parliamentary delegation complies with Rule 6 of the Assembly's Rules of Procedure. The list of members of the Moldovan delegation ensures a fair representation of the political groups in the Moldovan parliament. The Committee proposes that the Assembly ratify the credentials of the parliamentary delegation of Moldova.

18. However, given the provisional nature of the Moldovan parliamentary delegation, and since new credentials will in any case be presented at the opening of the Assembly's 2010 session, it is important that the Moldovan Parliament takes full account of the requirements set out in the Assembly's Rules of Procedure in the future, in order to guarantee balanced political representation within its delegation.

19. The Committee therefore considers that this matter might be dealt with by the Assembly's Monitoring Committee as part of the dialogue which it maintains with the Moldovan authorities. The Committee proposes that the Monitoring Committee make an urgent request to the Moldovan Parliament concerning its intentions to fill the four vacant seats of substitutes on the delegation.

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Reporting committee: Committee on Rules of Procedure, Immunities and Institutional Affairs

Reference to committee: Decision of the Assembly on 28 September 2009, Rule 7.2

Draft resolution unanimously adopted by the committee on 29 September 2009

Members of the committee: Mr John **Greenway** (Chair), Mr Rudi **Vis** (1st Vice-Chair), Mr Lintner (2nd Vice-Chair), Mr Agius, Mrs **Bemelmans-Videc**, Mrs Benaki, Mr Cebeci, Mr Chope, Mrs **Err**, Mr Gross, Mr Haibach, Mr Höfer, Mr Holovaty, Mr Huseynov, Mr Islami, Mr **Kumcuoğlu**, Mrs Lilliehöök, Mrs Mendonça, Mrs Pernaska, Mr **Rowen**, Mr Rustamyan, Mr **Saar**, Mr Schram, Mr Van Overmeire and Mr **Vareikis**.

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mr Heinrich, Mrs Clamer