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Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation

Committee Opinion¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Hans FRANKEN, Netherlands, Group of the European People's Party

A. Conclusions of the committee

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 concerning the credentials of the Russian delegation ([Doc. 13685](#)) complies with the Assembly's Rules of Procedure and the Statute of the Council of Europe (ETS No. 1).

Moreover, in view of its terms of reference, which give it authority to consider all issues concerning the privileges and immunities of members of the Parliamentary Assembly, the committee wishes to table an amendment concerning the situation of Ms Nadiia Savchenko, member of the Parliamentary Assembly, currently being detained in the Russian Federation.

B. Proposed amendment

Amendment A (to the draft resolution)

In paragraph 11, after the second sentence, add the following sentence:

“It demands that the Russian Federation respect its obligations under international law, as a Party to the General Agreement on Privileges and Immunities and its Protocol, according to which Ms Nadiia Savchenko, as a member of the Parliamentary Assembly, enjoys European parliamentary immunity».

C. Explanatory memorandum by Mr Franken, rapporteur for opinion

1. Introduction

1. At the opening of the part-session on 26 January 2015, Mr Robert Walter, supported by the required number of members of the Parliamentary Assembly, challenged the still unratified credentials of the parliamentary delegation of the Russian Federation on substantive grounds, pursuant to Rule 8 of the Rules of Procedure. Mr Walter referred to a serious violation of the fundamental principles of the Council of Europe mentioned in Article 3 and the Preamble of the Statute the Council of Europe, as well as to Russia's failure to honour its obligations and commitments, given that it was occupying the territory of another Council of Europe

1. Reference to committee: Reference 4105 of 26 January 2015. Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). See [Doc. 13685](#). Opinion approved by the committee on 27 January 2015.



member State with the support of members of its parliament. The Parliamentary Assembly decided to refer the challenge to the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe for report and, in keeping with Rule 8.3 of the Rules of Procedure, to the Committee on Rules of Procedure, Immunities and Institutional Affairs for opinion.

2. The Committee on Rules of Procedure will therefore consider, in this opinion, whether the proposal contained in the Monitoring Committee's report complies with the Rules of Procedure, particularly Rules 8 and 10, and the Statute of the Council of Europe.

1.1. Considerations of the Committee on Rules of Procedure following [Resolution 1990 \(2014\)](#) sanctioning the Russian parliamentary delegation

3. At its April 2014 part-session, the 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 resolved 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).

4. At its meeting on 11 April 2014, the Bureau of the Assembly considered that the Assembly decision needed further clarification and it invited the Committee on the Rules of Procedure, Immunities and Institutional Affairs to draw up a list of rights of participation or representation of members that may be withdrawn 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.

5. Consequently, at its meeting on 30 September 2014, the Committee on Rules of Procedure approved a Bureau opinion, after detailed examination of the matter, including:

- a general but non-exhaustive list of the rights of participation or representation of members of the delegation concerned in the activities of the Assembly and its bodies that may be withdrawn or suspended in the context of a challenge of credentials;
- general principles governing the Assembly's decision with a view to meeting the requirement of legal certainty that must apply to any decision to withdraw or suspend rights. Consequently, the Assembly must ensure that:
 - the decision is legally consistent and rational from the regulatory standpoint;
 - the decision is comprehensible and clear;
 - it does not adopt sanctions which contradict each other;
 - it does not adopt sanctions that could be open to interpretation with regard to their practical consequences;
 - the "sanction" is proportionate to the violation in question.

6. The present challenge of credentials therefore gives the Committee on Rules of Procedure its first opportunity to check whether the proposal made by the Monitoring Committee is compatible with the principles it established at the Bureau's request.

1.2. Precedents and examples of sanctions taken by the Parliamentary Assembly

7. To date, the Assembly has made use of these regulatory provisions established for "sanctioning" parliamentary delegations on very few occasions:

- 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 committees (the delegation recovered all its participation and representation rights in January 2001, with the adoption of [Resolution 1241 \(2001\)](#));
- 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 committees 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 \(2014\)](#)).

8. 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 committees from the beginning of the following session until their membership complied with the criteria set by the Rules of Procedure with regard to gender representation.

9. Consequently, with regard to its response to challenges of credentials on substantive (and non- formal) grounds, the Assembly has only decided to sanction a delegation on two occasions (suspension of the voting rights of members of the Russian delegation between April 2000 and January 2001; suspension of the voting rights, as well as some rights of participation or representation, of members of the Russian delegation between April 2014 and January 2015).²

2. Compliance of the motion to challenge the credentials of the Russian parliamentary delegation with the Rules of Procedure

10. The committee would point out that a motion to challenge the credentials of a delegation must comply with certain formal conditions in order to be admissible.

11. Rule 8.1 provides that “[t]he unratified credentials of a national delegation as a whole may be challenged on the substantial grounds set out in paragraph 2 by: at least thirty members of the Assembly present in the Chamber, belonging to at least five national delegations”, and that “[t]he authors shall state the reasons for the challenge”.

12. Rule 8.2 provides that:

“The substantive grounds on which credentials may be challenged are:

serious violation of the basic principles of the Council of Europe mentioned in Article 3³ and the Preamble to, the Statute; or

b. persistent failure to honour obligations and commitments and lack of co-operation in the Assembly’s monitoring procedure.”

13. The Committee on Rules of Procedure had been particularly concerned that any procedure for reconsideration of credentials should be based on a duly substantiated request “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”⁴. In the case of the present challenge, the committee can but note that the conditions fixed by the Rules of Procedure have been fully complied with.

2. 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](#)).

3. Article 3: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.”

4. See the committee’s Opinion on the “Reconsideration of previously ratified credentials of the Russian delegation on substantive grounds” ([Doc. 11728](#)), and its Opinion on “Implementation by Armenia of Assembly [Resolutions 1609 \(2008\)](#) and [1620 \(2008\)](#) of the Assembly” ([Doc. 11799](#)).

3. Consideration of the Monitoring Committee's proposal

14. Rule 10 – “Decision of the Assembly on a challenge or reconsideration of credentials” stipulates that:
- “10.1. Reports submitted to the Assembly or the Standing Committee under Rules 7.2., 8.3., 9.2. and 9.3. 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.”*
15. The Monitoring Committee concludes, in paragraphs 14, 15 and 16 of the draft resolution, that:
- “14. In order to foster the dialogue with the Russian Federation, the Assembly for now resolves to ratify the credentials of the Russian delegation. But, at the same time, as a clear expression of its condemnation of the continuing grave violations of international law in respect of Ukraine by the Russian Federation, including the Statute of the Council of Europe and Russia's accession commitments to this Organisation, the Assembly resolves to suspend the following rights of the Russian delegation for the duration of the 2015 session of the Assembly:*
- 14.1. the right to be appointed rapporteur;*
- 14.2. the right to be member of an ad hoc committee on observation of elections;*
- 14.3. the right to represent the Assembly in Council of Europe bodies as well as external institutions and organisations, both instructionally and on an occasional basis.*
- 15. In addition to the sanctions outlined in paragraphs 14.1 to 14.3, the Assembly resolves to suspend the voting rights and right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee of the Russian delegation to the Assembly at the opening of its June 2015 part-session, if Russia has not made marked and measurable progress towards implementing the demands of the Assembly formulated in this resolution in paragraphs 4.1 to 4.4, paragraphs 5.1 to 5.3; paragraphs 7.1 to 7.9, paragraph 11 and paragraphs 12.1 to 12.4; and has not given its full co-operation to the working group mentioned in paragraph 17 of this resolution.*
- 16. The Assembly resolves to annul the credentials of the Russian delegation at its June 2015 part-session if no progress is made with regard to the implementation of the Minsk protocols and memorandum as well as the demands and recommendations of the Assembly as expressed in this resolution, in particular with regard to the immediate withdrawal of Russian military troops from eastern Ukraine.”*
16. The Committee on Rules of Procedure notes that the Monitoring Committee's report shows a worsening of the situation in Eastern Ukraine, Russia's “lack of willingness to honour its accession commitments with regard to its relations with neighbouring countries”, as well as “repeated and credible reports of human rights violations, including possible war crimes”. The committee may therefore verify whether the principle of proportionality of sanctions to the violations found was effectively being complied with.

4. Conclusions and proposed amendment

17. The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the draft resolution contained in the report submitted by the Monitoring Committee ([Doc. 13685](#)) complies with the Assembly's Rules of Procedure, in particular its Rule 10, and the Statute of the Council of Europe.
18. At its meeting on 26 January 2015, the Assembly's Bureau sought the opinion of Committee on Rules of Procedure, Immunities and Institutional Affairs on the status of Ms Nadiia Savchenko with regard to Council of Europe immunity. The committee has therefore considered how Ms Savchenko might benefit from the protection afforded under the General Agreement on Privileges and Immunities of the Council of Europe and its Protocol (see opinion to the Bureau, document AS/Pro (2015) 04 def), and it therefore wishes its conclusions to be included in the draft resolution.

19. After considering the status of Ms Savchenko from the standpoint of the parliamentary immunity afforded by the General Agreement on Privileges and Immunities of the Council of Europe and its Protocol, it is for the Committee on Rules of Procedure to amend the present draft resolution and to call on the Russian authorities to honour their international law obligations and commitments under these two conventions.