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Consideration of the annulment of the previous ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2034 (2015))

Committee Opinion¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Egidijus VAREIKIS, Lithuania, 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 annulment of the previously ratified credentials of the delegation of the Russian Federation ([Doc. 13800](#)) complies with the Parliamentary Assembly's Rules of Procedure and the Statute of the Council of Europe (ETS No.1). However, it wishes to present an amendment intended to bring the wording of paragraph 6 of the draft resolution presented into line with the letter of the Rules of Procedure.

B. Proposed amendment

Amendment A (to the draft resolution)

In the draft resolution, in paragraph 6, replace the words “resolves not to annul” with the words “resolves to confirm”.

C. Explanatory memorandum by Mr Vareikis, rapporteur for opinion

1. Introduction

1. At the opening of the Parliamentary Assembly's 2015 ordinary session, the still unratified credentials of the Russian delegation were challenged on substantive grounds pursuant to Rule 8 of the Rules of Procedure in view, *inter alia*, of grave violations of the Statute of the Council of Europe and the commitments entered into by the Russian Federation upon joining the Organisation, in connection with the conflict in eastern Ukraine and also the illegal annexation of Crimea.

1. Reference to committee: [Resolution 2034 \(2015\)](#), Reference 4128 of 24 April 2015. Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). See [Doc. 13800](#). Opinion approved by the committee on 23 June 2015.



1.1. The sanctions adopted by the Assembly in Resolution 2034 (2015)

2. On 28 January 2015, the Assembly adopted [Resolution 2034 \(2015\)](#) and, while ratifying the credentials of the Russian delegation “in order to foster dialogue with the Russian Federation” and efforts to find a negotiated solution to the conflict, it resolved to suspend a number of rights of the Russian delegation for the duration of the 2015 session of the Assembly, “as a clear expression of its condemnation of the continuing grave violations of international law in respect of Ukraine by the Russian Federation”; namely:

- the voting rights and the right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee (paragraph 15 of [Resolution 2034 \(2015\)](#)):
- the right to be appointed rapporteur; the right to be a member of an ad hoc committee on observation of elections; the right to represent the Assembly in Council of Europe bodies as well as in external institutions and organisations, both institutionally and on an occasional basis (paragraph 14 of [Resolution 2034 \(2015\)](#)).²

3. Furthermore, in paragraph 16 of [Resolution 2034 \(2015\)](#), the Assembly resolved “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 Protocol 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”.

1.2. Subsequent events

4. On 12 February 2015, Mr Alexei Pushkov, chair of the Russian delegation, informed the Assembly of the decision to “suspend all official contact with the Parliamentary Assembly until the end of 2015”, including “any missions that the bodies of the Assembly might decide to send to the Russian Federation”.

5. On 24 April 2015, the Bureau of the Assembly referred the matter, in respect of follow-up to paragraph 16 of [Resolution 2034 \(2015\)](#), to the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) for report and to the Committee on Rules of Procedure for opinion.

6. On 28 May 2015, the Monitoring Committee approved its report. In the draft resolution adopted, the Assembly “deeply regrets the manifest lack of progress with regard to the implementation of the demands made in [Resolution 2034 \(2015\)](#)” and “reiterates its position and demands with regard to the Russian intervention resulting in a military conflict in eastern Ukraine, the illegal annexation of Crimea and the continuing deterioration of the human rights situation in that region”. However, as a “signal of its commitment to an open and constructive dialogue with the Russian delegation”, it is proposed “not to annul, at this time, the already ratified credentials of the Russian delegation”.

2. Observations concerning the interpretation of Resolution 2034 (2015) from a regulatory viewpoint

7. When the Russian delegation's credentials had been challenged previously, in April 2014 and January 2015,³ the Committee on Rules of Procedure, while issuing an opinion which held that the Monitoring Committee's proposals complied with all the applicable rules, took the step of clarifying certain points of procedure. In addition, in September 2014, in an opinion to the Bureau of the Assembly and at its request, the committee defined a general and non-exhaustive list of members' rights of participation and representation in the activities of the Assembly and its bodies that may be subject to deprivation or suspension in the context of a challenge or reconsideration of credentials, which also sets out general principles intended to serve as a framework ensuring that the Assembly's decision meets the requirement of legal certainty which must prevail for any decision of deprivation or suspension of rights.⁴

2. It should be recalled that, in April 2014, the Assembly had reconsidered the previously ratified credentials of the Russian delegation on substantive grounds and had resolved, by adopting [Resolution 1990 \(2014\)](#), “in order to mark its condemnation and disapproval of the Russian Federation's actions with regard to Ukraine”, to suspend the following rights of the members of the Russian delegation: 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. Nevertheless, the Assembly had resolved not to annul its credentials, for the sake of maintaining political dialogue. The “sanctions” adopted in [Resolution 1990 \(2014\)](#) remained in force until the opening of the 2015 session.

3. See [Doc. 13488](#) and [Doc. 13689](#).

2.1. Regarding the possibility of the Assembly reconsidering the sanctions currently applied

8. In [Resolution 2034 \(2015\)](#),⁵ the Assembly envisages the possibility of reinstating some of the Russian delegation's rights which it suspended for the duration of the 2015 session, with effect from the April 2015 part-session, "if Russia has made marked and measurable progress towards implementing the demands of the Assembly formulated in this resolution" (paragraph 15).

9. This question was not submitted to the Assembly in April 2015, at the request of the Monitoring Committee that, "in the light of the manifest lack of progress on the demands of the Assembly formulated in [Resolution 2034 \(2015\)](#)" and the lack of co-operation on the part of the Russian delegation, the debate on this subject be withdrawn from the agenda of the second part-session.⁶

10. In the aforementioned opinion to the Bureau, the Committee on Rules of Procedure stated its view on whether the principle of legal certainty and political consistency had been followed when certain rights were withdrawn (by way of "sanctions") within the framework of the procedure for challenging credentials. In particular, the committee advised against dividing up sanctions and applying different time periods for them.

11. In this connection, the committee reiterated the distinction to be drawn, where sanctions were concerned, between "deprivation" and "suspension" of rights: deprivation (withdrawal or prohibition resulting in the loss of enjoyment of a right) is a far-reaching decision, without any time limit, whereas suspension (in the form of an interruption or temporary prohibition) is associated with a decision concerning duration.⁷

12. Consequently, once the Assembly itself has determined a precise duration for the suspension of rights by way of a sanction, any move to restore them before that period expires, even as an incentive for maintaining or resuming political dialogue, must be very carefully judged, as it hardly conforms to the wish of the Committee on Rules of Procedure for a sanction "to be consistent, clear, rational and apply the rules in a uniform manner".⁸

2.2. Regarding the possibility of the Assembly reconsidering the confirmation of ratified credentials

13. The credentials of the Russian delegation – challenged at the opening of the 2015 ordinary session – were ratified in January 2015. However, paragraph 16 of [Resolution 2034 \(2015\)](#) makes provision for the Assembly to reconsider its decision and annul these credentials mid-session – at its June 2015 part-session.

14. A clause providing for the "re-verification" of previously ratified credentials has been used twice in the past, in 2011 and 2013, when there were challenges, on procedural grounds, to the still unratified credentials of certain delegations whose composition did not meet the criteria laid down by the Rules of Procedure for the representation of both sexes.⁹ However, this is the first time that such a provision has been enshrined in a resolution adopted following a challenge to credentials on substantive grounds.

15. The rapporteur notes that such a clause is grounded in the Assembly's power to regulate its composition, proceeding on the basis of the Statute of the Council of Europe, the Assembly's Rules of Procedure and the relevant resolutions. However, he believes that the practice of including a clause anticipating the reconsideration of a delegation's previously ratified credentials during a session in the event of failure to fulfil the requirements laid down should be used sparingly, the general rule being that ratification

4. See opinion AS/Pro (2014) 10 def. These general principles applicable to any decision by the Assembly to adopt sanctions pursuant to Rule 10 of the Rules of Procedure are as follows: the decision should retain a degree of regulatory rationality and legal consistency; be clear and comprehensible; not contain sanctions which contradict each other or are open to interpretation as to their practical consequences; ensure that sanctions are proportionate to the seriousness of the infringements in question.

5. It should be pointed out that [Resolution 2034](#), as adopted, incorporates amendments tabled by Assembly members on which the Committee on Rules of Procedure was not required to state a view as to their conformity to the letter or spirit of the Rules of Procedure.

6. Monitoring Committee decision of 17 March 2015.

7. In April 2000, the Assembly sanctioned the Russian delegation, whose ratified credentials had been challenged on substantive grounds in connection with the conflict in Chechnya, by depriving its members "of their rights to vote in the Assembly and its bodies". However, the report presented by the Political Affairs Committee formulated a possibility of reconsidering those sanctions at the next part-session in June 2000. Ultimately this was not followed up.

8. See opinion AS/Pro (2014) 10 def.

9. See [Resolution 1789 \(2011\)](#) – Challenge on procedural grounds of the still unratified credentials of the parliamentary delegations of Montenegro, San Marino and Serbia (and [Doc. 12488](#)), and [Resolution 1944 \(2013\)](#) – Challenge on procedural grounds of the still unratified credentials of the parliamentary delegation of Iceland (and [Doc. 13246](#)).

remains valid until the opening of the following session. Accordingly, clauses of this type should be included solely in situations of blatant non-compliance with the provisions of the Statute of the Council of Europe and/or the Assembly's Rules of Procedure or in emergencies¹⁰; moreover, the requirements must be formulated in a precise, specific and realistic manner.

3. Compliance of the draft resolution presented by the Monitoring Committee with the Assembly's Rules of Procedure

16. Before assessing the compliance of the proposal prepared by the Monitoring Committee (Doc. 13800) with the Assembly's Rules of Procedure, the Committee on Rules of Procedure should first look at the scope of the approach taken by the Monitoring Committee in the light of the framework strictly defined by Resolution 2034 (2015).

3.1. Scope of the operative provisions of the draft resolution

17. In January 2015, the Assembly ratified the Russian Federation delegation's credentials while deciding to suspend the exercise of a number of its members' rights of participation and representation, for the duration of the 2015 session. Since the Assembly did not reconsider these sanctions at the April 2015 part-session, as paragraph 15 of the resolution enabled it to do, any initiative to revisit the decision taken and revise the list of suspended rights was then ruled out for the entirety of the 2015 ordinary session.

18. The Assembly also decided (paragraph 16) that it would reconsider its decision to confirm the Russian delegation's credentials, at its June 2015 session, if no progress had been observed towards implementing the demands of the Assembly set out in Resolution 2034 (2015). Consequently, the course of action referred to by the Assembly, stated in clear and unequivocal terms, is limited to establishing whether or not to annul the credentials of the Russian delegation on the basis of the criteria set out in Resolution 2034 (2015).

19. The rapporteur welcomes the fact that the Monitoring Committee's report makes the same analysis and adopts the same approach (paragraphs 8 and 9 of the explanatory memorandum).

3.2. Analysis of the compliance of the operative provisions of the draft resolution with the Assembly's Rules of Procedure

20. The reconsideration of the previously ratified credentials of the Russian Federation delegation is performed on the basis of a Monitoring Committee report,¹¹ taken in combination with paragraph 16 of Resolution 2034 (2015). The Assembly's Rules of Procedure are very clear as to the (limited) options open for the Assembly's decision.

21. Under Rule 10.1 of the Rules of Procedure, a draft resolution on reconsideration of previously ratified credentials must propose in its operative part one of the following three options:

- confirmation of ratification of the credentials;
- annulment of ratification of the credentials;
- 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.

22. Given the specific framework for the present reconsideration of the Russian delegation's credentials (section 3.1 above), the draft resolution presented by the Monitoring Committee can recommend only one alternative: either confirmation by the Assembly of the Russian Federation delegation's credentials or the annulment of those credentials.

10. "Such urgent action may particularly be deemed necessary if the situation in the country of a parliamentary delegation whose credentials have been ratified has fundamentally changed since the opening of the ordinary session and constitutes a serious violation of the basic principles of the Council of Europe's Statute which are also safeguarded through Rule 6 of the Rules of Procedure" (report on the challenge of credentials of national delegations in the course of an ordinary session, Doc. 7481, 1996).

11. Under Rule 9.3 of the Rules of Procedure the Monitoring Committee "may, in a report foreseen on the agenda of the Assembly ..., call into question the credentials of a national delegation".

23. However, the rapporteur notes that the Monitoring Committee's proposal in paragraph 6 of the draft resolution ("As a signal of its commitment to an open and constructive dialogue with the Russian delegation, the Assembly, while noting the sanctions currently in place, *resolves not to annul*, at this time, the already ratified credentials of the Russian delegation") does not exactly match the wording of Rule 10.1.

24. Consequently, the draft resolution should be amended and the words "not to annul" replaced with the words "to confirm" so that the resolution's wording matches that of the Rules of Procedure, while remaining true to the underlying aim of the draft resolution.

3.3. Consequences for the admissibility of amendments tabled to the draft resolution (Doc. 13800)

25. Obviously, the draft resolution presented may be amended, in line with Rule 10.2 of the Rules of Procedure, in which case the Committee on Rules of Procedure should raise the issues likely to arise over the admissibility of some of them with regard to the scope of the operative provisions of the draft resolution, as specified above (section 3.1).

26. As previously mentioned, the terms of reference assigned to the Monitoring Committee in connection with paragraph 16 of [Resolution 2034 \(2015\)](#), expressed in clear and unequivocal terms, do not permit the consideration of any amendment seeking a fresh decision from the Assembly on the list of suspended rights of Russian delegation members, this question being closed to any further discussion until the end of the present 2015 ordinary session.

27. Consequently, as the draft resolution presented states that "the Assembly, while noting the sanctions currently in place, resolves not to annul, at this time, the already ratified credentials of the Russian delegation", so far as it concerns the operative part, only amendments seeking the annulment of the previously ratified credentials should be declared admissible.

4. Consistency of the draft resolution presented by the Monitoring Committee with the principles applicable in the case of a challenge or reconsideration of a delegation's credentials

28. The rapporteur notes that the Monitoring Committee's report speaks of "the manifest lack of progress with regard to the implementation of the demands made in [Resolution 2034 \(2015\)](#)" and deplores "a clear rejection [by the Russian delegation] of [the Assembly's] offer to maintain an open and constructive dialogue", which "raises questions about the Russian delegation's commitment to co-operate and to maintain a constructive dialogue with the Assembly, including on the honouring of its commitments and obligations to the Council of Europe".

29. While not casting doubt on the compliance of the draft resolution's operative provisions with the Rules of Procedure, but bearing in mind paragraph 16 of [Resolution 2034 \(2015\)](#), the rapporteur notes that the Monitoring Committee's decision to confirm the Russian delegation's credentials, in the light of the findings of its report (sections 2 and 3), might prompt criticism that there is no justification for this.

30. Quite clearly, the Monitoring Committee's position must be interpreted in the light of an overall context and the background surrounding its adoption. The committee's approach typifies the Assembly's determination to maintain political dialogue, since April 2014, in a most harrowing context in which several thousand Europeans have lost their lives in the armed conflict and the living conditions of others continue to deteriorate alarmingly, as detailed in the report and emphasised in paragraph 3 of the draft resolution. One could also point to the recent violations of the ceasefire revealed by the Special Monitoring Mission of the Organization for Security and Co-operation in Europe (OSCE), which are not down to the Ukrainian forces and do nothing to promote a lasting solution and the peaceful settlement aspired to by the Assembly.

31. The rapporteur notes that, in 2014, at the joint initiative of the Assembly and the Russian delegation, several mediation sessions had been organised and meetings had taken place. However, in February 2015, the Russian delegation decided to break off all official contact with the Assembly. No meetings or talks which might mark the resumption of dialogue have been scheduled to date. The naming of two Assembly members, on arbitrary and non-transparent grounds, on the list of politicians banned from entering Russia also casts doubt on the willingness of the Russian authorities, including their parliamentary delegation, to engage in active, open and constructive dialogue and, as the draft resolution points out, "raises questions about the Russian delegation's commitment to co-operate".

32. Furthermore, the rapporteur regrets that the Assembly's repeated calls for the release of Parliamentary Assembly member Ms Nadiia Savchenko, including in [Resolution 2034 \(2015\)](#), has not been followed up by the Russian authorities who continue to ignore the fact that she enjoys European parliamentary immunity. The rapporteur recalls that, to date, Ms Savchenko has been detained in Russia for more than one year.

33. Consequently, the rapporteur can only argue in favour of a coherent, rational, strategic and effective approach to the use of the procedure for challenging credentials. The duty of the Assembly is to uphold the standards and principles of the Council of Europe.

34. So it may be considered that the substantial information presented by the Monitoring Committee in its report, and its analysis of the situation, could equally provide justification for the opposite conclusion to the one adopted by the committee (not to annul the previously ratified credentials at this time), in which case the admissibility of an amendment seeking, on the contrary, the annulment of the previously ratified credentials could not be contested since it is clearly based on the findings of the committee tasked with the report.

5. Conclusion

35. The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the proposal in the report by the Monitoring Committee concerning the credentials of the Russian delegation complies with the Assembly's Rules of Procedure and the Statute of the Council of Europe.

36. However, the committee notes that the wording of paragraph 6 of the draft resolution does not exactly coincide with the wording of Rule 10.1 of the Rules of Procedure, and recommends that the draft text be amended accordingly.

37. Furthermore, the committee points out that the operative provisions of the draft resolution are strictly limited by the framework laid down in paragraph 16 of [Resolution 2034 \(2015\)](#), stated in clear and unequivocal terms. Consequently, and in view of the Monitoring Committee's proposal to confirm the credentials of the Russian delegation, and as far as it concerns the operative part, only amendments seeking to annul the credentials should be declared admissible.

38. Finally, the committee calls for a coherent, rational and strategic approach to the use of the procedure for challenging credentials.