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Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of Azerbaijan

Committee Opinion[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Ms Ingjerd Schie SCHOU, Norway, Group of the European People's Party

A. Conclusions of the committee

The Committee on Rules of Procedure, Immunities and Institutional Affairs is of the opinion that the proposal contained in the report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) on the challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of Azerbaijan (Doc. 15898) complies with the Assembly's Rules of Procedure and the Statute of the Council of Europe (STE No 1).

B. Explanatory memorandum by Ms Ingjerd Schie Schou, rapporteur for opinion

1. Introduction and regulatory framework

1. On 22 January 2024, Mr Frank Schwabe (Germany, SOC), supported by the required number of members of the Assembly, challenged the still unratified credentials of the parliamentary delegation of Azerbaijan on substantive grounds, pursuant to Rule 8 of the Rules of Procedure.

2. The substantive grounds on which the credentials were challenged refer to the deteriorating situation with regard to pluralist democracy, respect for the rule of law, human rights and fundamental freedoms as well as to the role of the Azerbaijani authorities in the events of September 2023 which led to the flight of the entire ethnic Armenian population from Nagorno-Karabakh to Armenia. All these issues cast serious doubt as to the compliance of the Republic of Azerbaijan with its commitments and obligations in the Council of Europe.

3. In line with Rule 8.3 of the Rules of Procedure, the Assembly decided to refer the challenge to the Monitoring Committee for report and to the Committee on Rules of Procedure, Immunities and Institutional Affairs for opinion.

4. At its meeting on 22 January 2024, the Rules Committee appointed me rapporteur for opinion.

5. On 23 January 2024, the Monitoring Committee adopted a report and a draft resolution which proposes to the Assembly not to ratify the credentials of the Azerbaijani delegation.

6. The Committee on Rules of Procedure is asked therefore to consider the compatibility of the proposed decision with the Assembly's Rules of Procedure, as well as with the Statute of the Council of Europe.

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1. Reference to Committee: Assembly decision of 22 January 2024. Reference 4785 of 22 January 2024. Reporting Committee: Monitoring Committee. See Doc. 15898. Opinion approved by the committee on 23 January 2024.

7. Rule 10.1 reads as follows:

"10.1. Reports submitted to the Assembly or the Standing Committee under Rules 7., 8.3., 8.4., 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.

The members' rights to vote, to speak and to be represented in the Assembly and its bodies shall not be suspended or withdrawn in the context of a challenge to or reconsideration of credentials."

2. On the compatibility of the proposed decision with the Assembly's Rules of Procedure

2.1. Compliance of the motion to challenge the credentials with formal requirements

8. The committee points out that challenging the credentials of a delegation must comply with certain formal conditions in order to be in order. 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".

9. The committee notes that the challenge was supported by more than 30 members, belonging to at least 5 national delegations. No irregularities were observed. It could therefore be concluded that the request had gathered sufficient support of members, as required by the Rules.

2.2. Analysis of the substantive grounds in the light of the scope of Rule 8 of the Rules of Procedure

10. Rule 8.2 provides that:

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

a. serious violation of the basic principles of the Council of Europe mentioned in Article 3 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."

11. In its previous opinions the Committee on Rules of Procedure expressed its concern that any procedure for challenges of credentials should be based on a duly substantiated request.

12. It therefore welcomes the fact that the present challenge of the credentials contains a detailed statement of the grounds on which it is based. As was announced in the plenary, the challenge of the credentials of the delegation of Azerbaijan relates to, inter alia: "a dramatic escalation in domestic politics with more and more political prisoners"; "the violent displacement of more than 100 000 people in Nagorno-Karabakh"; the lack of co-operation with the Assembly rapporteurs; as well as the non-invitation to the Assembly to observe the early presidential election which will take place on 7 February 2024.

13. The reasons given to challenge the credentials constitute prima facie legitimate grounds able to fall under the scope of Rule 8.

14. The rapporteur notes that the Monitoring Committee's report includes a detailed description of the facts leading the rapporteur and the Monitoring Committee to propose not to ratify the credentials of the Azerbaijani delegation.

2.3. Precedents

15. In 2019, the Assembly adopted Resolution 2292 (2019) in which the Assembly ratified credentials of the Russian Federation.

16. In 2015, the Assembly adopted Resolution 2034 (2015) in which the Assembly ratified the credentials of the Russian Federation delegation but suspended the following rights during the 2015 session: to be appointed rapporteur, membership of an ad hoc committee on election observation; to represent the Assembly in Council of Europe bodies and external institutions and organisations. Furthermore, the Assembly resolved to suspend the voting rights and the right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee of the Russian delegation to the Assembly. The Assembly decided to return to this issue, with a view to reinstating these two rights at its April 2015 part-session if Russia had made marked and measurable progress towards implementing the demands of the Assembly formulated in this resolution. In Resolution 2063 (2015), adopted in June, the Assembly confirmed the sanctions.

17. In 2014, in its Resolution 1990 (2014) the Assembly suspended the voting rights of the delegation of the Russian Federation as well as the right to be represented in the Bureau, the Presidential Committee and the Standing Committee and the right to participate in election observation missions, until the end of the 2014 session (it was referred to the Monitoring Committee for report – Doc 13483 – and to the Rules Committee for opinion – Doc 13488).

18. Before that date, it is worth recalling that the Assembly has decided on only one occasion to suspend the voting rights of the members of a delegation, whose credentials had been challenged on substantive grounds. The Russian delegation was sanctioned in this way in April 2000, in connection with the conflict in Chechnya; it recovered all its participation and representation rights in January 2001 (Resolution 1241 (2001)).

19. It is also interesting to note, looking back a little further into the past, that the Assembly, faced with the situation in Greece following the 1967 military coup d'état and the installation of the "colonels' regime", 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).

20. 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).

21. These two decisions are doubtless atypical but illustrate the Assembly's ability to react to the violation by a member State of its obligations under the Statute and to sanction the parliamentary delegation of the member State in question.

3. Conclusion

22. The Committee on Rules of Procedure, Immunities and Institutional Affairs considers that the proposal included in the draft resolution presented by the Monitoring Committee not to ratify the credentials of the Azerbaijani delegation is an option compliant with Rule 10.1 of the Assembly's Rules of Procedure.

23. If the proposal by the Monitoring Committee is carried by the Assembly, there will be no delegation of the parliament of Azerbaijan for the whole 2024 session. It goes without saying that if parliamentary elections were to take place in the course of 2024, the newly elected parliament of Azerbaijan would be able to submit credentials for a new delegation according to the Rules.