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Challenge on procedural grounds of the still unratified credentials of the Parliamentary delegation of Albania

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

Summary

At the opening of the Assembly 2009 session, on 26 January 2009, the still unratified credentials of the delegation of Albania to the Parliamentary Assembly were contested on procedural grounds (Rule 7 of the Rules of Procedure), as there were reasons to believe that one member of that delegation for the 2008 session had been removed from the delegation for the 2009 session in breach of the relevant provisions of the Rules of Procedure.

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 Albania.

1. Reference to committee: Decision of the Assembly on 26 January 2009, Rule 7.2.

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A. Draft resolution

1. On 26 January 2009 the still unratified credentials of the parliamentary delegation of Albania were contested on procedural grounds (Rule 7 of the Assembly's Rules of Procedure), as there were reasons to believe that one member of that delegation for the 2008 session had been removed from the 2009 delegation in breach of the relevant provisions of the Rules of Procedure.

2. The Parliamentary Assembly has examined the various objections made and found that the appointment of the Albanian delegation to the Parliamentary Assembly has been made in compliance with Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure.

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

4. Furthermore, it invites the Monitoring Committee to examine during its discussions with the Albanian authorities how the Albanian Parliament is informed of any changes to the composition of its delegation to the Parliamentary Assembly and if any adaptations of current practice, particularly when the parliament is not in session, would be useful.

B. Explanatory memorandum, by Mr John Greenway

1. Introduction

1. At the Assembly's sitting on 26 January 2009, Mr Eörsi challenged the still unratified credentials of the delegation of Albania to the Parliamentary Assembly on procedural grounds (Rule 7.1. of the Rules of Procedure). According to Rule 7.2, the Assembly referred the credentials to the Committee on Rules of Procedure, Immunities and Institutional Affairs for report. In support of the challenge of credentials he said, in particular, that there were strong reasons to believe that one member for the 2008 session, Mr Biberaj, had been removed from the Albanian delegation in full breach of the relevant provisions of the Rules of Procedure.

2. This draft report will examine if the procedure of appointment of the Albanian delegation:

– has followed the principles laid down in Article 25 of the Statute of the Council of Europe in combination with Rule 6 of the Assembly's Rules of Procedure; and

– has not disregarded the principles guaranteed by Rule 7.1.*b* of the Assembly's Rules of Procedure.

Furthermore, other reasons advanced in connection with this case will be examined.

2. Did the appointment procedure of the Albanian delegation for the parliamentary year of 2009 follow the principles laid down in Article 25 of the Council of Europe's Statute in combination with Rule 6 of the Assembly's Rules of Procedure?

3. According to Article 25 of the Statute, the members (Representatives and Substitutes) of a Council of Europe member state to the Assembly have to be "elected by [their national] parliament from among the members thereof or appointed from among the members of that parliament in such manner as it shall decide (in French: 'selon une procédure fixée par celui-ci') (…)".

2.1. The credentials of the Albanian members transmitted on 5 January 2009

4. Rule 6.1. stipulates that "The credentials of the Representatives and Substitutes, elected within the national or federal parliament or appointed from among the members of the national or federal parliament shall be sent to the President of the Assembly by the President (Speaker) of the national parliament or the President (Speaker) of a national parliamentary chamber or any person delegated by them. Each member state shall notify the Secretary General of the Council of Europe of the competent authority appointed for this purpose. The credentials shall be transmitted if possible, not less than one week before the opening of the Session".

5. Such authority for Albania is the Speaker of the national parliament or any person delegated by him/her. The Albanian credentials for the parliamentary year 2009 were forwarded to the President of the Parliamentary Assembly on 5 January 2009 by the delegated person, the Secretary of the Albanian delegation. According to the credentials form, the members included on the list had been appointed by the Albanian Parliament on 7 November 2005. Consequently, this appointment met the requirements. Furthermore, this issue has not been contested in connection with the challenge of the Albanian credentials.

2.2. The change of a member notified to the Parliamentary Assembly on 8 January 2009

6. On 8 January 2009, the Speaker of the Albanian Parliament sent a letter to the President of the Parliamentary Assembly informing him that "Mr Ilirjan Rusmali, member of parliament of the Democratic Party, (….), will be a member of the permanent Albanian delegation to the Council of Europe Parliamentary Assembly for the year 2009, as well as the chairman of this delegation, instead of Mr Aleksander Biberaj, who is appointed to another duty".

7. The questions which arise are: is this change possible according to the Parliamentary Assembly's Rules and does it meet the requirements laid down by the Albanian Parliament, namely "the manner decided by it", in the sense of Article 25 of the Council of Europe's Statute.

2.3. Evaluation and conclusion

8. It is a current practice in the Parliamentary Assembly that national delegations make changes to the credential forms transmitted in preparation of the Assembly's January part-session before these credentials are submitted to the Assembly for ratification. The Assembly has, in the past, even accepted the withdrawal of

an entire list of credentials of a parliamentary delegation. Therefore, the change of a member of the Albanian delegation notified on 8 January 2009 by the Speaker of the Albanian Parliament raises no new precedent and appears to be in order.

9. Did it meet the requirements of the "manner" decided by the Albanian Parliament for the appointment of the Albanian delegation to the Parliamentary Assembly? The Committee on Rules of Procedure, Immunities and Institutional Affairs of the Parliamentary Assembly has been informed by members of the Albanian delegation that Rule 7 paragraph 3 of the Rules of Procedure of the Albanian Parliament is worded as follows:

> *"The Chairperson (Speaker) of the Assembly, in consultation with the Chairs of parliamentary groups determines the list of members and heads of the Assembly's permanent delegations to international organisations. The composition of the delegation reflects to the largest possible extent the political composition of the Assembly. The lists of the permanent delegations' members and every change introduced thereafter are conveyed to the Assembly in its first following plenary session. In case of objections the Assembly decides with open vote."*

10. The chairs of the Albanian political groups and the Speaker of the Parliament therefore play a key role for the appointment of the Albanian delegation to the Parliamentary Assembly. A letter which Mr Patozi, Chair of the Albanian political group (Democratic Party Parliamentary Group) to which Mr Biberaj belongs, sent to the President of the Parliamentary Assembly on 26 January 2009, confirms the replacement of Mr Biberaj by Mr Rusmali, also a member of the Democratic Party.

11. The only open question in this connection is therefore whether the change in the composition of the Albanian delegation has been conveyed to the Albanian Parliament. At its meeting on 27 January 2009, the Committee on Rules of Procedure had an exchange of views with two members of the Albanian delegation, Mr Rusmali and Mr Ismali, and was informed of the following:

– the Albanian Parliament was in recess until 19 January 2009; when, on 8 January 2009 the Albanian Speaker notified the President of the Parliamentary Assembly of the change in the Albanian delegation, the Albanian Parliament, as such, could not therefore be informed;

– the Albanian Parliament was informed of the replacement of a member of the Albanian delegation to the Assembly – on the basis of the above-mentioned Article 7.3 of the Rules of Procedure of the Albanian Parliament – during its sitting on 26 January 2009. No vote was taken although a debate took place.[2]

12. According to a letter of three Albanian Assembly members to the Committee on Rules of Procedure of 26 January 2009, the Speaker of the Albanian Parliament cannot put into question the will of a parliamentary group concerning the appointment of one of its members to a delegation. This information was confirmed during the aforementioned exchange of views on 27 January 2009. The Speaker of the Albanian Parliament had therefore no other choice on 8 January than to notify the change in the Albanian delegation to the President of the Parliamentary Assembly.

13. Thus, while the Albanian Parliament had not been informed of the change in the composition of the Albanian delegation on 8 January 2009, this was remedied on 26 January 2009. Consequently, the procedure followed by the Albanian authorities is in compliance with Article 25 of the Statute in combination with Rule 6 of the Rules of Procedure.

3. Rule 7 of the Assembly's Rules of Procedure

14. There is no indication that the principles guaranteed by Rule 7.1 of the Assembly's Rules of Procedure have not been respected in the present case. The list of members of the Albanian delegation ensures a fair representation of the political groups in the Albanian parliament and includes at least one representative of each sex. The absence of a solemn statement by an Albanian member, as mentioned in Rule 6, has not been raised.

2. More detailed information is given in the minutes of the meeting.

4. Other reasons advanced

15. In a letter of 22 January 2009 to the President of the Parliamentary Assembly, Mr Biberaj advanced that he had only been informed immediately prior to the January part-session of the Parliamentary Assembly, in an informal way, about his replacement in the Albanian delegation. He also mentions that throughout the process of his replacement he had not been consulted on this change.

16. The Assembly has repeatedly stated that, in connection with credentials, it does not examine political issues concerning the process of appointment of Assembly members but only procedural issues. There may be issues relating to this particular case but it should also be borne in mind that this report could set a precedent for future cases.

5. Final remarks

17. After an examination of the objections raised in this case, the Committee on Rules of Procedure, Immunities and Institutional Affairs proposes that the Assembly should ratify the credentials of the Albanian delegation.

18. There may have been discourtesies in respect of the treatment of Mr Biberaj, but these do not themselves give rise to breaches of our Assembly's own Rules. It should also be borne in mind that this report could set a precedent for future cases.

19. Nevertheless, the discussion with two Albanian members of the Assembly on 27 January 2009 has shown that Rule 7.3 of the Rules of Procedure of the Albanian Parliament, which governs the appointment of the delegation to the Parliamentary Assembly, contains ambiguity. The rules give rise to problems when a change is made to the delegation during a recess of the parliament. These questions could be followed up by the Parliamentary Assembly's Monitoring Committee.

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

Reference to committee: Decision of the Assembly on 26 January 2009, Rule 7.2.

Draft resolution adopted by the committee on 27 January 2009.

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

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

Secretariat of the committee: Mr Heinrich, Mrs Clamer.