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

Report¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Egidijus VAREIKIS, Lithuania, Group of the European People's Party

Summary

On 25 January 2016, at the opening of the Parliamentary Assembly session, the still unratified credentials of the parliamentary delegation of the Republic of Moldova were challenged on the grounds that the incomplete composition of the delegation, as well as the absence of one of the main political parties in the delegation, did not allow fair representation of the political parties or groups represented in the Moldovan Parliament.

Bearing in mind the assurances provided by the Moldovan Parliament, the Committee on Rules of Procedure proposes to ratify the credentials of the Moldovan parliamentary delegation, but provide for the automatic suspension of the voting rights of its members in the Assembly and its bodies in accordance with Rule 10.1.c of the Rules of Procedure, with effect from the April 2016 part-session, if the composition of the delegation has not been brought into conformity with Rule 6.2.a of the Rules of Procedure by then and new credentials presented, since it is a matter of appointing three members to the vacant seats.

The procedure for verifying delegations' credentials at the start of each annual session allows national parliaments to update their political representation, taking into account any party-political developments that may have occurred within those parliaments. Parliaments must therefore be diligent and make the necessary changes so that their delegation remains politically representative. This particularly applies to a parliament where majorities come and go in a context of significant governmental instability.

1. Reference to committee: Assembly decision, Reference 4179 of 25 January 2016.



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A. Draft resolution²

1. On 25 January 2016, at the opening of the Parliamentary Assembly session, the still unratified credentials of the parliamentary delegation of the Republic of Moldova were challenged on procedural grounds, in accordance with Rule 7.1 of the Assembly's Rules of Procedure, namely on the grounds that the incomplete composition of the delegation did not allow fair representation of the political parties or groups represented in the Moldovan Parliament.
2. The Assembly examined the objection raised and established that the composition of the Moldovan delegation did not comply with the principles set out in Rule 6.2 of the Rules of Procedure under which national parliamentary delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments, and that the challenge to its credentials was valid. It notes that the delegation has indicated that the parliament was unable to meet the condition laid down in the Rules of Procedure within the deadline and it undertook to comply as soon as possible.
3. Consequently, the Assembly decides to ratify the Moldovan parliamentary delegation's credentials but, in accordance with Rule 10.1.c of the Rules of Procedure, it decides to suspend its members' right to vote in the Assembly and the Assembly's bodies as from the beginning of the Assembly's April part-session 2016 if, by that date, the delegation's composition has not been brought into line with Rule 6.2.a of the Rules of Procedure.
4. It invites the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the co-rapporteurs concerned to ensure, within the framework of dialogue with the Moldovan authorities, that the Moldovan Parliament is properly informed of the requirements laid down in the Assembly's Rules of Procedure and that it will take due account of them in subsequent changes to the composition of its parliamentary delegation, particularly when filling the three remaining vacant seats on the delegation.

2. Draft resolution adopted by the committee on 26 January 2016.

B. Explanatory memorandum by Mr Vareikis, rapporteur

1. Introduction

1. At the opening sitting of the Parliamentary Assembly's 2016 session, on 25 January 2016, Mr Xuclà (Spain, ALDE), backed by at least 10 other members belonging to five national delegations, challenged the still unratified credentials of the parliamentary delegation of the Republic of Moldova on procedural grounds in accordance with Rule 7.1.b of the Assembly's Rules of Procedure, namely on the grounds that, for the second consecutive year, the Moldovan Parliament was presenting an incomplete delegation that did not allow fair representation of the political parties or groups represented in that Parliament. The delegation comprised only seven members instead of ten, which did not allow full representation of all the political tendencies in the Moldovan Parliament, notably the Liberal party. 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. The committee must therefore examine whether the composition of the Moldovan delegation and the procedure for appointing the delegation itself:

- was consistent with the principles set out in Article 25 of the Statute of the Council of Europe taken together with Rule 6 of the Assembly's Rules of Procedure; and
- was consistent with principles laid down in Rule 6.2.a³ of the Assembly's Rules of Procedure.

3. Rule 7.1.b of the Assembly's Rules of Procedure states that "Credentials may be challenged by at least ten members of the Assembly present in the Chamber, belonging to at least five national delegations, 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 ...".

4. Under Rule 7.2 of the Rules of Procedure, "if the Committee concludes that the credentials should be ratified, it may submit an opinion to the President of the Assembly, who shall read it out in the plenary sitting of the Assembly or the Standing Committee, without debate. If the Committee concludes that the credentials should not be ratified or that they should be ratified but that some rights of participation or representation should be denied or suspended, the Committee's report shall be placed on the agenda for debate within the prescribed deadlines".

2. Conformity of the composition of the Moldovan parliamentary delegation with Rule 6 of the Assembly's Rules of Procedure

5. 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 first part of the 2016 ordinary session of the Assembly ([Doc. 13953](#)) mentions that the composition of the Moldovan parliamentary delegation is as follows:

Representatives

Mr Valeriu GHILETCHI (Liberal Democratic Party)

Mr Andrei NEGUTA (Socialist Party)

Ms Liliana PALIHOVICI (Liberal Democratic Party)

Mr Vladimir VORONIN (Communist Party)

ZZ...

Substitutes

Ms Valentina BULIGA (Democratic Party)

Mr Igor DODON (Socialist Party)

Ms Violeta IVANOV (Communist Party)

3. Article 6.2.a: "Insofar as the number of their members allows, national delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments ..."

ZZ...

ZZ...

2.1. The applicable statutory provisions and rules

6. According to Article 25 of the Statute of the Council of Europe, the members (representatives and substitutes) of parliamentary delegations are *“elected by its Parliament from among the members thereof, or appointed from among the members of that Parliament, in such manner as it shall decide”*.

7. For its part, Rule 6.1. of the Assembly's Rules of Procedure 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. ...”*.

8. The present challenge to the credentials of the Moldovan parliamentary delegation is based on the fact that its composition would not meet the criterion of fair representation of political parties or groups laid down in the Rules of Procedure. In this connection, the Committee on Rules of Procedure will no doubt also refer to the *“principles to be used to assess the concept of fair representation of political parties or groups in national delegations to the Parliamentary Assembly”*, established by the Assembly in 2011⁴.

2.2. The Moldovan delegation's credentials sent on 21 January 2016

9. The Moldovan delegation's credentials were sent to the President of the Parliamentary Assembly on 21 January 2016. There was no accompanying letter from the Speaker of the Moldovan Parliament to explain the situation. However, the Assembly's Table Office was told that nominations had not been received from certain political parties and, since Parliament had no longer been in session when they had been sent in to the Bureau of the Parliament, it had not been possible to ratify them in time in plenary session.

10. The form transmitting the composition of the Moldovan delegation, signed by the Speaker of Parliament, Mr Andrian Candu and dated 21 January 2016, shows that the representation of the political groups in the Moldovan Parliament (which comprises 101 seats) was configured as follows:

- Socialist party of the Republic of Moldova faction, comprising 24 deputies (belonging to the opposition);
- Democratic party of Moldova faction, comprising 19 deputies (belonging to the majority);
- Liberal Democratic party of Moldova faction, comprising 11 deputies (belonging to the opposition, the Moldovan Parliament's internet site mentions representation of 19 deputies);
- Liberal party faction, comprising 13 deputies (belonging to the majority);
- Party of Communists of the Republic of Moldova faction, comprising 7 deputies (belonging to the opposition);

as well as 27 non-affiliated deputies (the internet site indicates 19 non-affiliated deputies).

11. It should be borne in mind that these five parliamentary factions were formed following the parliamentary elections of 30 November 2014 and that, since then, Moldova's political and parliamentary landscape has evolved remarkably. The information posted on the Moldovan Parliament's official internet site indicates that the representativity of one of the five factions has changed somewhat and they therefore seem outdated.

12. While it is not within the committee's remit, in the framework of the present report, to make a detailed analysis of the complex political context currently prevailing in Moldova, which may appear somewhat muddled, it would nevertheless seem that the information provided by its Parliament when transmitting the delegation's credentials is not fully up to date, owing to recent political upheavals when the government under Pavel Filip was set up.

4. See [Resolution 1798 \(2011\)](#) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, which comprises a series of 12 principles to be used to assess whether political parties or groups are fairly represented in national delegations to the Assembly.

13. In the 2014 elections, the Alliance for European integration formed by the Liberal Democratic party of Moldova (PLDM, 23 seats), the Democratic party (PD, 19 seats) and the Liberal party (LP, 13 seats) won 55 seats out of 101, with the opposition comprising two factions: the Socialist party (25 seats) and the Party of Communists of the Republic of Moldova (PCRM, 21 seats). However, the dividing lines between majority and opposition have continually shifted, firstly with the withdrawal of the Liberal party from the government coalition and then the alliance of the Liberal party and the Democratic party. In December 2015, 14 deputies of the PCRM, including Ms Violeta Ivanov, left that party and became non-affiliated members of parliament, lending their support to the new liberal government of Pavel Filip. In January 2016, 7 members of the Liberal Democratic party broke away from their party.

14. It was a somewhat diverse coalition of 57 deputies that gave its vote of confidence to the Filip government on 21 January this year; among others, it comprises 19 democrats, 13 liberals, 14 ex-communists, 7 ex-liberal democrats and one liberal democrat (Mr Ghiletschi).

15. So the composition of the Moldovan parliamentary delegation is odd to say the least, as three of the four representatives' seats filled are occupied by members of the opposition ... and no members of the liberal party in power feature at all!

16. The information passed on by the chair of the parliamentary delegation reveals that two of the three vacant seats are allocated to the Liberal party, which was slow to put forward the names of its candidates. The Bureau of the Parliament would have confirmed them but, as Parliament is not in session until 1 February 2016, it is technically impossible to validate these nominations in plenary session straight away.

17. Finally, it should be noted that, last year, two substitutes' seats, already allocated to the Liberal party, remained vacant within the delegation and were left unfilled during the 2015 session, without this prompting in the Assembly a challenge to the credentials submitted at the April 2015 part-session to complete the delegation following the parliamentary elections of November 2014.

3. Precedents in the Parliamentary Assembly concerning challenges to credentials based on Rule 7 of the Rules of Procedure and the rulings of the committee

18. There are few precedents where the Assembly has been asked to take a position on a challenge to credentials on the ground of a lack of fair political representation of political parties or groups, and to which the committee can refer here, in the present context:

- In January 2012, the still unratified credentials of the Ukrainian parliamentary delegation were challenged. The list of members of the Ukrainian delegation contained erroneous information in that three members were listed as members of the Yuliya Tymoshenko Bloc, when in fact they actually sat in the parliament under other political labels. Taking the view that the composition of the delegation did not violate the principle of the fair representation of political parties or groups, the committee concluded that the credentials should be ratified.⁵
- In January 2010, the committee was asked to take a position on the challenge to the still unratified credentials of the Armenian parliamentary delegation, relating to the alleged under-representation of opposition parties or groups. The challenge claimed that the Armenian parliament had “manipulated its internal rules in order to exclude a member of the EPP group”. The committee concluded that the credentials should be ratified, insofar as the list of delegation members ensured a fair representation of the political groups in the Armenian National Assembly and included a representative and substitute belonging to the opposition.⁶
- In 1998 and 1999, the Rules Committee considered the composition of the special guest delegation from Armenia, as the main opposition party, accounting for 50 out of a total of 149 members of the Armenian parliament, had not been granted any of the delegation's four seats.⁷ The Rules Committee then 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 special guest delegation's credentials on the condition that a seat would remain vacant for a Representative of the opposition.

5. Opinion to the President of the Parliamentary Assembly, document AS/Pro (2012) 03 def.

6. Opinion to the President of the Parliamentary Assembly, document AS/Pro (2010) 06 def.

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

19. In the examination of previous challenges to credentials, it was pointed out that the Assembly must avoid any interference in the internal political affairs of a member state. The Assembly must, in principle, simply ensure that the main political currents present in a parliament are represented and, in particular, that the delegation includes opposition parties.⁸ It is this position that is reflected in the above-mentioned Assembly decisions and which has been enshrined among the principles to be used to assess whether political parties or groups in national parliaments are fairly represented in the Parliamentary Assembly delegations, as laid down in [Resolution 1798 \(2011\)](#).

20. As to the objection to the effect that the Moldovan delegation is incomplete, it is not for the Committee on Rules of Procedure to analyse the political or party-political reasons for this state of affairs, which is an internal matter for the Moldovan Parliament, if there is nothing to indicate that a breach of the regulatory procedure occurred when appointing the delegation. It is precisely because the formalities were observed that three seats remain vacant.

4. Assessment and conclusions

21. In the absence of reliable data regarding the exact number of parliamentarians who currently belong to the majority and opposition factions, it is difficult for the Committee on Rules of Procedure to ascertain to what extent the requirements laid down in the Assembly's Rules of Procedure on fair political representation have been observed. Given the complex nature of the political situation in Moldova, there is no evidence that the principles enshrined in Rule 6.2 of the Assembly's Rules of Procedure have not been observed by the Moldovan Parliament.

22. For the political labels assigned to members of the Moldovan parliamentary delegation are, despite appearances, no guarantee of their actual and, above all, long-term allegiance to the majority or the opposition. It seems that the majority currently holds 1 representative's seat out of the 4 seats filled, and 2 substitutes' seats out of the 3 filled. The Moldovan Parliament has not, therefore, failed to comply with the requirements laid down in Rule 6.2 of the Assembly's Rules of Procedure insofar as 3 seats remain vacant, including notably for the benefit of the Liberal Party which is not represented. The composition of the Moldovan parliamentary delegation will, however, need to be completed as soon as possible, in keeping with the principle of fair representation set out in Rule 6.2.

23. As it stated when considering a similar challenge to credentials, it is not for the Committee on Rules of Procedure to become involved in party politics when verifying the credentials of delegations. This is why it is not the committee's role to take a position on the merits of the decision by the ruling Liberal Party not to submit in time its candidatures for the seats allocated to it. Although it affects the balance of political representation in the delegation, in this case for the benefit of the opposition, such decision was a political choice on the part of the Liberal Party and no doubt deliberate.

24. At its meeting on 26 January 2016, the Committee on Rules of Procedure heard the observations made by Ms Palihovici, Chairperson of the Moldovan delegation and member of the Committee on Rules of Procedure

25. Accordingly, having considered the objections raised, and in accordance with Rule 10.1 of the Rules of Procedure,⁹ the Committee on Rules of Procedure concluded that the credentials of the Moldovan parliamentary delegation have been validly challenged and that it is not in a position to confirm that these credentials are in compliance with Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure, insofar as the delegation is incomplete and one of the main parties is not represented.

26. In view of the prevailing political situation in Moldova, and bearing in mind the assurances provided by the Moldovan Parliament, the committee proposes that the Assembly ratify the credentials of the Moldovan parliamentary delegation, but provide for the automatic suspension of the voting rights of its members in the Assembly and its bodies in accordance with Rule 10.1.c of the Rules of Procedure, with effect from the April

8. [Doc. 5497](#), paragraph 7; [Doc. 6101](#), paragraph 11.

9. "Reports submitted to the Assembly ... under Rules 7.2 ... 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."

2016 part-session, if the composition of the delegation has not been brought into conformity with Rule 6.2.a of the Rules of Procedure by then and new credentials presented, since it is a matter of appointing three members to the vacant seats.¹⁰

27. Moreover, according to several members of the committee, the fact that a majority political party failed to submit in time the names of the candidates for the seats allocated to it in the Moldovan delegation should not be deemed to constitute a violation of the principle of fair representation of political groups in the Moldovan Parliament.

28. It is for the committee to remind the Moldovan Parliament that, like all Council of Europe member state parliaments, it has an obligation to promote political pluralism in the Assembly delegations, ensuring balanced political representation of its constituent parties or groups. The procedure for verifying delegations' credentials at the start of each annual session allows national parliaments to update their political representation, taking into account any party-political developments that may have occurred within those parliaments. Parliaments must therefore be diligent and make the necessary changes so that their delegation remains politically representative. This particularly applies to parliaments where majorities come and go in a context of significant governmental instability.

29. The committee considers that it is in the interest of Council of Europe member state parliaments to fill, as soon as possible, all the representatives' and substitutes' seats allocated to them under Article 25 of the Statute. This is especially important for countries which are under a monitoring procedure, so as to ensure that the political spectrum of national political representation, including notably the opposition parties, are fully represented in the parliamentary delegations concerned. The political parties represented in the Moldovan Parliament must therefore ensure that internal politicking does not interfere with the proper functioning of the Assembly.

30. The committee therefore considers that this matter could be monitored by the Assembly's Monitoring Committee, as part of the regular dialogue that it conducts with the Moldovan authorities.

10. Such a decision was taken by the Assembly in June 2013 in the challenge on procedural grounds of the still unratified credentials of the parliamentary delegation of Iceland (see [Resolution 1944 \(2013\)](#) and [Doc. 13246](#)).