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

Committee Opinion¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Ms Ingjerd SCHOU, Norway, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Rules of Procedure, Immunities and Institutional Affairs (Committee on Rules of Procedure) 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) to ratify the credentials of the Russian parliamentary delegation ([Doc. 15216](#)) is in accordance with the Parliamentary Assembly's Rules of Procedure and the Statute of the Council of Europe (ETS No. 1).
2. However, it has to be emphasised that by virtue of the obligation of States and international organisations under international law not to recognise the consequences of the illegal annexation of a territory, the ratification of the credentials of the Russian delegation by the Assembly would in no way constitute recognition, even implicit, of the annexation of Crimea by the Russian Federation.

B. Proposed amendment

Amendment A (to the draft resolution)

After paragraph 9, insert the following paragraph: "It has to be emphasised that by virtue of the obligation of States and international organisations under international law not to recognise the consequences of the illegal annexation of a territory, the ratification of the credentials of the Russian delegation by the Assembly would in no way constitute recognition, even implicit, of the annexation of Crimea by the Russian Federation."

C. Explanatory memorandum by Ms Ingjerd Schou, rapporteur for opinion

1. Introduction

1. At the opening of the Assembly's part-session, on 25 January 2021, Ms Mariia Mezentseva (Ukraine, EPP/CD), supported by the required number of members of the 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, on accounts of the deterioration of the situation in the Russian Federation

1. Reference to committee: Assembly decision, Reference 4559 of 25 January 2021. Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). See [Doc. 15216](#). Opinion approved by the committee on 27 January 2021.



with regard to the rule of law and democracy, the respect for basic freedoms and human rights, in particular freedom of expression, assembly and association. In particular, she referred to the gradual and continuous suppression of political opposition, the arrest and ongoing detention of Mr Navalny and, more generally the compliance of the Russian Federation with its commitments and obligations in the Council of Europe and with recommendations included in Assembly [Resolution 1990 \(2014\)](#), [Resolution 2034 \(2015\)](#), [Resolution 2063 \(2015\)](#), [Resolution 2292 \(2019\)](#) and [Resolution 2320 \(2020\)](#).

2. The Assembly decided to refer the challenge to the Monitoring Committee 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.

3. On 26 January 2021, the Monitoring Committee adopted a report and a draft resolution. The draft resolution proposes “to ratify the credentials of the members of the Russian delegation” and called the Russian Federation to implement in return a number of actions.

4. The Committee on Rules of Procedure is asked therefore to consider the compatibility of the above decision with the Rules of Procedure, in particular Rule 8 as well as with the Statute of the Council of Europe.

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

5. The committee points out that a motion to challenge the credentials of a delegation must comply with certain formal conditions in order to be admissible. 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”.

6. This is the first time that a challenge of credentials has taken place at the opening sitting of a hybrid session. Following the request to challenge the credentials by Ms Mezentseva, members present in the Chamber supported the request by standing up while another 26 votes were cast through the remote electronic voting system, which brings to 38 the total amount of votes cast by representatives of more than five national delegations. No irregularities were observed. It could therefore be concluded that the request has gathered the required votes.

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

7. 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 of, 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.”

8. In its previous opinions the Committee on Rules of Procedure expressed its concern that any procedure for challenges to credentials should be based on a duly substantiated request. As was announced in the plenary, the challenge of the credentials of the Russian delegation relates to, *inter alia*:

- systematic suppression of the political opposition in Russia;
- persistent violation of human rights in Crimea and Donbass;
- constitutional amendments entrenched in the Constitution of the Russian Federation and which open the possibilities for the Russian Constitutional Court to declare that decisions of interstate bodies adopted on the basis of provisions of international treaties which the Russian Federation is a party to which collide with the Constitution may not be executed in the Russian Federation;
- the fact that some members of the delegation were elected in the nationwide constituency which incorporated an illegally annexed territory.

9. The reasons given to challenge the credentials constitute *prima facie* legitimate grounds able to fall under the scope of Rule 8 in that they contain a presentation of the facts and circumstances leading to support the assumption of persistent grave violation of Article 3 of the Statute and of the Russian Federation's accession commitments to the Organisation.

10. However, it is not the task of the Committee on Rules of Procedure to enter into substantive considerations, the analysis of the substantial grounds being under the scrutiny of the Monitoring Committee according to its terms of reference.

11. The rapporteur notes that the Monitoring Committee's report includes a detailed description of facts leading the rapporteur and the Monitoring Committee to support the proposal to confirm ratification of the Russian delegation credentials.

2.3. Additional observations

12. As an *obiter dictum*, I would like to address the last argument raised by Ms Mezentseva related to the composition of the delegation. The Committee on Rules of Procedure, which according to its terms of reference has the authority to address questions related to challenging credentials on procedural grounds, had already discussed the implication which a composition of a delegation may have for the challenge of credentials on substantive grounds (Rule 8 of the Rules of Procedure) with regard to two issues in particular: the presence in a delegation of a member against whom the European Union has implemented restrictive measures, and members elected in a nationwide constituency which includes an illegally annexed territory.

13. With regard to the first issue, the experts invited to the committee meeting held on 2 October 2019 concluded that, although the Assembly is not explicitly required to take into account any restrictive measures adopted by the European Union in dealing with a challenge to the credentials of members of a national delegation *on procedural grounds*, the Assembly would be fully justified in taking into account the existence of such restrictive measures when challenging the credentials of members of a national delegation *on substantive grounds*, under Rule 8 of the Rules of Procedure, insofar as the Rule refers to a serious violation of the fundamental principles enshrined in the Preamble and Article 3 of the Statute, and that these restrictive measures were adopted by the European Union in response to such a serious violation. There is no direct obligation by the Council of Europe to take into account the European Union's decisions. However, the values and principles shared by the two organisations are somewhat similar, and the European Union's decision is a factor to be taken into consideration because it highlights the existence of the violations of international law and their seriousness, which justifies the European Union restrictive measures.

14. The second question was considered in light of Opinion No. 955/2019 which the European Commission for Democracy through Law (Venice Commission)² delivered upon the request by the committee and in which it stated that, when verifying the credentials of parliamentarians who have been elected in a nationwide constituency which covers a territory that may not be recognised as forming part of the organising State, "the impact of the inclusion of the annexed territory on the final results of the election should be examined. The Assembly should consider this impact paying due regard to the principle of proportionality and determine whether the credentials should be ratified or refused". Moreover, the Assembly's obligation not to recognise an annexation has an impact on its verification of the credentials of the delegation of the annexing State.

15. The Committee on Rules of Procedure considered whether ratifying the credentials of a national delegation which includes parliamentarians elected by citizens of an illegally annexed territory:

- would run counter to the obligation not to recognise the consequences of an internationally wrongful act;
- would be tantamount to recognition of the consequences of that internationally wrongful act – the illegal election of parliamentarians in that constituency;
- would give it any legal effect and could entail implicit recognition by the Council of Europe and the Assembly of the annexation of Crimea by the Russian Federation.

16. The Venice Commission replied in the negative: clearly, the validation of the credentials of members elected on the basis of an illegal election cannot lead to a recognition of the annexation of the annexed territory by the annexing State which organised the elections.

2. Report on the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for parliamentary elections, adopted by the Venice Commission at its 121st Plenary Session, (Venice, 6-7 December 2019), [CDL-AD\(2019\)030-e](#).

17. I believe it is important to make these conclusions explicit in the opinion in order to highlight the link that might exist between substantive considerations and the composition of a delegation, as well as the fact that the ratification of the credentials of the delegation of the Russian Federation will in no way constitute recognition, even implicit, of the annexation of Crimea by the Russian Federation.