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**Committee on Rules of Procedure, Immunities and Institutional Affairs**

**Challenge on procedural grounds of the still unratified  
credentials of Ms Zaroulia (Greece, NR) and Mr Gaudi Nagy  
(Hungary, NR)**

**Report**

presented by Mrs Nataša Vučković, Chairperson, on behalf of the committee

**A. Opinion to the President of the Parliamentary Assembly<sup>1</sup>**

1. On 21 January 2013, the still unratified credentials of Ms Zaroulia (Greece, NR) and Mr Gaudi Nagy (Hungary, NR) were challenged on procedural grounds in accordance with Rule 7 of the Assembly's Rules of Procedure on the ground that they both belong to political parties that do not respect the values of the Council of Europe and have made statements that are inconsistent with those values.
2. The Committee on Rules of Procedure, Immunities and Institutional Affairs has examined the objections raised and determined that Ms Zaroulia and Mr Gaudi Nagy were appointed to the Parliamentary Assembly in accordance with Article 25 of the Statute of the Council of Europe and Rule 6 of the Assembly's Rules of Procedure.
3. The committee consequently concludes that the credentials of Ms Zaroulia and Mr Gaudi Nagy should be ratified.
4. The committee wishes to point out that the procedure to challenge the credentials of individual members is governed by strict criteria laid down by the Rules of Procedure. Rule 7.1. does not make it possible to challenge the credentials of individual members in an effective manner, so as to sanction the actions or words where these seriously and persistently violate the principles and values defended by the Council of Europe. It is not for the committee, within the strict limits of its competence, to rule on the existence of substantial violations of the Statute of the Council of Europe, whose obligations are binding on member States, a matter which comes under a separate procedure not implemented by the authors of the challenge upon the opening of the session.
5. The committee wishes to state, in the strongest terms, that this decision must not be interpreted as an expression of support or recognition, albeit indirect, of activities, beliefs, actions or political positions that the Parliamentary Assembly has constantly denounced throughout its 63 years of existence. The committee recalls the Parliamentary Assembly's unwavering commitment to the promotion and defence of human rights, democracy and the rule of law, in particular in combating racism, xenophobia, intolerance and anti-Semitism.

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<sup>1</sup> Adopted unanimously by the committee on 22 January 2013

6. The committee considers that the current wording of Rule 7.1.c. does not make it possible to challenge the credentials of individual members in an effective manner, particularly so as to sanction the actions or words of a member where these seriously and persistently violate the principles and values defended by the Council of Europe. It therefore invites the Bureau of the Assembly to ask it to re-examine this question in order duly to take into due consideration the concerns that emerged among the members of the Assembly.

## B. Explanatory memorandum

### 1. Introduction

1. At the opening of the 2013 session, during the sitting of 21 January, Ms Nirenstein (Italy, EPP/CD) challenged the still unratified credentials of Ms Zaroulia (Greece, NR) and Mr Gaudi Nagy (Hungary, NR) on procedural grounds in accordance with Rule 7 of the Rules of Procedure, stating that they both belonged to political parties which were racist and anti-Semitic, which clashed with Article 3 of the Statute of the Council of Europe, according to which every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and that the two members had made statements which were incompatible with these principles.

2. Pursuant to Rule 7.2, the Assembly referred the challenged credentials to the Committee on Rules of Procedure, Immunities and Institutional Affairs.

3. The committee must accordingly examine whether the procedure whereby these two members were appointed:

- was consistent with the principles laid down in Article 25 of the Statute of the Council of Europe, read together with Rule 6 of the Assembly's Rules of Procedure, and

- whether it infringed the principles guaranteed by Rule 7.1 of the Assembly's Rules of Procedure.

4. Under Rule 7.2, "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. Applicable rules and mandate of the Committee on Rules of Procedure

5. Under Article 25 of the Statute members of the Assembly (representatives or substitutes) for a given member State of the Council of Europe shall be "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".

6. Rule 7.1. of the Assembly's Rules of Procedure provides:

*"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:*

*7.1.a. one or more of the relevant provisions of the Statute (in particular Articles 25 and 26);*

*7.1.b. 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 and should include in any case one member of the under-represented sex, appointed as a representative;*

*7.1.c. the absence of a solemn statement as mentioned in Rule 6.2.b.*

*The authors shall state the reasons for the challenge."*

*2.1. Foundations for a challenge to credentials based on Rule 7*

7. Rule 7, which has been in force in its current wording since 2000 (Resolution 1202 (1999)), makes it possible to challenge the credentials of a delegation or an individual member. At the time a distinction was clearly drawn according to whether the challenge was based on technical – procedural – grounds (Rule 7) or on political – substantial - grounds (Rules 8 and 9). It was determined that, in the case of a challenge on political grounds, only the credentials of a delegation as a whole could be challenged and solely the procedure provided for in Rules 8 and 9 would be applicable.

8. Rule 7.1 provides for only three procedural grounds on which a challenge may be founded. A challenge to the credentials of an individual member can clearly be founded only on Rule 7.1.a. (one or more of the relevant provisions of the Statute, relating to procedural obligations) or Rule 7.1.c. (absence of a solemn statement).<sup>2</sup> A challenge to the credentials of a delegation would be based on paragraph a or b of Rule 7.1.

9. The Assembly has not so far had occasion to examine a challenge to the credentials of members of a national delegation, in an individual capacity, pursuant to the new Rules of Procedure in force since January 2000. In examining the current challenge the Committee on Rules of Procedure is therefore obliged strictly to determine the framework in which a challenge of this kind can be upheld.

### **3. Conformity of the credentials of Ms Zaroulia and Mr Gaudi Nagy with the Rules of Procedure**

10. The challenge to the credentials of Ms Zaroulia and Mr Gaudi Nagy is clearly based on the fact that these two members belong to political parties which Ms Nirenstein qualified as "racist and anti-Semitic" and that the values defended by these parties are contrary to the ideals and principles of the Council of Europe, as set out in Article 3 of its Statute. Moreover, these members have made statements that are inconsistent with the values of the Council of Europe.

11. It is clear that the grounds relied on, no matter how they are formulated and no matter how serious the allegations made, in no way pertain to a violation of the formal provisions of the Rules of Procedure or the Statute of the Council of Europe, as sanctioned by Rule 7. What is at issue is not the absence of a solemn statement signed by the members, nor the non-application of a formal clause of the Statute, but rather non-compliance with the aims and the fundamental principles of the Council of Europe. This is a substantial and in essence political matter.

12. The problem raised by this challenge to the presence within the Assembly of members belonging to extremist parties or movements is not a new one.<sup>3</sup>

#### *3.1. Political composition of national delegations*

13. Rule 6.2 of the Rules of Procedure requires that national delegations be "composed so as to ensure a fair representation of the political parties or groups in their parliaments". The composition of the national delegations to the Assembly must reflect that of the national parliaments, but the choice of representatives is left to the discretion of the national parliaments, on the basis of internal rules specific to each parliament.

14. In 2011, on the basis of a report by the Committee on Rules of Procedure, the Assembly adopted Resolution 1798 on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, listing a set of 12 principles for assessing whether political parties or groups are fairly represented in the national delegations to the Assembly.

15. The above applicable rules oblige the national parliaments to reflect the political spectrum of national representation in their delegation to the Assembly; it therefore cannot be ruled out that delegations to the Assembly will include members of extremist parties, to the extent that those parties are sufficiently represented in the national parliaments. In so far as these members of extremist parties have been democratically elected by the people to sit in their country's parliament and they belong to duly formed political groups, parliaments that deliberately excluded them from their inter-parliamentary delegations would expose themselves to criticism that these delegations are not constituted on a politically fair basis. It is not for the Assembly to go further than the rules laid down in the Statute of the Council of Europe or those it has itself set (Rule 6), overriding the national parliaments' choice of members composing their delegations.

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<sup>2</sup> In the case under consideration here both Ms Zaroulia and Mr Gaudi Nagy signed the solemn statement. (Under Rule 6.2.b, "Credentials of members of a national delegation shall be accompanied by a signed written statement by the individual members reading as follows: *"I, the undersigned, ..., hereby affirm and state that I will subscribe to the aims and basic principles of the Council of Europe, mentioned in the Preamble, in Article 1.a. and in Article 3 of the Statute of the Council of Europe."*)

<sup>3</sup> Resolution 1344 (2003) "Threat posed to democracy by extremist parties and movements in Europe" read: "The Assembly is aware that the struggle against extremism presents democracies with a dilemma because they must on the one hand guarantee freedom of expression, assembly and association, allowing all political groups to exist and be politically represented, and on the other hand must defend themselves, and introduce safeguards against the activity of some extremist groups which flout democratic principles and human rights." In Resolution 1370 (2004) on Contested credentials of the parliamentary delegation of Serbia and Montenegro: "the Assembly considers it necessary to deal with the problem of extremist parties and individual members of these parties when they are appointed as members of national delegations to the Assembly." This is the approach underlying Resolution 1443 (2005).

16. It is for this reason that two principles – and only two principles – are binding on national parliaments when composing their delegations: fair representation of parties or political groups; and minimum representation of the under-represented gender. The choice of their representatives is left to the national parliaments' discretion, in accordance with their own rules of procedure.

### 3.2. *Foundations for a challenge to credentials in an individual capacity*

17. In 2005 the Assembly had the opportunity to clarify the question of challenges to credentials in an individual capacity notably with regard to parliamentarians whose acts or words do not satisfy the required standards.<sup>4</sup> Express reference is therefore made here to the report presented at the time, which discussed in detail the pros and cons of introducing a possibility to ban individual members of national parliaments having expressly identified themselves with the activities and programmes of parties opposing the Council of Europe's values from becoming Parliamentary Assembly representatives and substitutes.

18. In Resolution 1443 (2005) the Assembly considered that "if new Rules of Procedure were introduced allowing to compose the national delegations in another way than on the basis of a fair representation as provided in Rule 6.2, or to challenge credentials of individual members of national parliaments who are accused of activities or statements persistently violating the basic principles of the Council of Europe, there would be a danger of abuse. The Assembly cannot have an interest in becoming the forum for political infighting.(...)"

19. The Assembly concurred with the Committee on Rules of Procedure, which took the view that a challenge to credentials in an individual capacity, on political grounds, could entail a risk of misuse for the pursuit of political battles, whether internal – between political parties represented in the national parliament, and even for settling personal scores – or at the level of the Assembly, by opening up the possibility of pursuing at a procedural level political controversies (between political groups or representatives of different delegations, and so on). The committee considered that "The Assembly cannot have an interest in becoming a forum for political infighting."

20. In addition, excluding national parliamentarians originating from extremist parties would be playing into their hands, since it would amount to endorsing a well-established rhetoric that they use and abuse, whereby they systematically present themselves as the "victims" of isolation and exclusion by traditional parliamentarianism or the "establishment". Their democratic legitimacy is founded, and it must not be downplayed on the ground that the ideas these parliamentarians represent are contrary to the principles defended by the majority or violate values promoted by the Council of Europe. In the context of a democratic forum such as the Assembly it is important to conquer by convincing people through intellectual debate of the strength of the principles on which the Organisation's action is founded. It could even be considered, in perhaps idealistic terms, that membership of the Assembly can have a moderating, educational effect on members of extremist parties.

### 3. CONCLUSIONS

21. The Assembly has established precise procedures and specific criteria for assessing whether a challenge to credentials is founded. Since this is a challenge on procedural grounds and in an individual capacity, it is not for the Assembly, in the context of the regulatory framework, to conduct an examination on the merits and assess the extremist, "racist and anti-Semitic" nature of the acts, words and statements of Ms Zaroulia and Mr Gaudi Nagy.

22. The reasons raised in the challenge are not such as to substantiate a breach of the formal provisions laid down by the Rules of Procedure or the Statute of the Council of Europe, as sanctioned under Rule 7. What is at issue is not the absence of a solemn statement signed by the members or the non-application of a procedural clause of the Statute, but rather non-compliance with the objectives and fundamental principles of the Council of Europe. This is a substantial and in essence political question coming under Rule 8 of the Rules of Procedure.

22. Consequently, the Committee on Rules of Procedure, Immunities and Institutional Affairs could consider that the individual credentials of Ms Zaroulia and Mr Gaudi Nagy are in accordance with Rule 6 of the Assembly's Rules of Procedure and should therefore be ratified.

<sup>4</sup> See Resolution 1443 (2005) and the report by the Committee on Rules of Procedure and Immunities concerning a Challenge to the credentials of individual members of a national delegation to the Parliamentary Assembly on substantive grounds (Doc. 10494), which related to the delegation of Serbia and Montenegro.

23. The committee could further consider that the current wording of Rule 7.1.c. does not make it possible to challenge the credentials of individual members in an effective manner, particularly so as to sanction the actions or words of a member where these seriously and persistently violate the principles and values defended by the Council of Europe. It could therefore decide to re-examine this question at a later date (for example in connection with the report on follow-up of the reform of the Assembly) and consider another wording that takes into due consideration the concerns that emerged among the members of the Assembly.