

AS/Pro (2020) 04 def

28 January 2020

ardoc04_2020

Committee on Rules of Procedure, Immunities and Institutional Affairs

Challenge on procedural grounds of the still unratified credentials of the parliamentary delegation of North Macedonia, Poland, Portugal, San Marino, Sweden and Switzerland

Report¹

prepared by the Chairperson of the Committee

A. Opinion to the President of the Parliamentary Assembly²

1. On 27 January 2020, at the opening of the Parliamentary Assembly session, the still unratified credentials of six parliamentary delegations – North Macedonia, Poland, Portugal, San Marino, Sweden and Switzerland – were challenged on procedural grounds, in accordance with Rule 7.1 of the Assembly's Rules of Procedure, on the ground that the composition of these delegations failed to meet the condition laid down in Rule 6.2.a of the Rules of Procedure whereby national delegations must include the under-represented sex at least in the same percentage as is present in their parliaments.

2. At its meeting on 28 January 2020, the Committee on Rules of Procedure, Immunities and Institutional Affairs examined the objections raised. It notes that the condition laid down in Rule 6.2 of the Assembly's Rules of Procedure, according to which "national delegations shall include the under-represented sex at least in the same percentage as is present in their parliaments and, at a very minimum, one member of the under-represented sex appointed as a representative", is not sanctioned by Rule 7.1.b because in this rule, only a failure to meet the requirement that there must be at least one woman representative in each delegation can form the basis for a challenge to the credentials submitted. This condition, which is most certainly very limited where it comes to the fair representation of women, can legitimately be considered unsatisfactory. Therefore, the Committee on Rules of Procedure should be invited to prepare a report on this issue.

3. The Committee on Rules of Procedure notes that the composition of all these delegations fulfils the conditions laid down in Rule 7.1.b as they include at least one member of the under-represented sex as a representative.

4. The committee therefore concludes that the credentials of the six parliamentary delegations in question should be ratified.

¹ Reference to committee: Assembly decision of 27 January 2020

² Adopted by the committee on 28 January 2020

B. Explanatory memorandum

1. Introduction and applicable regulatory provisions

1. On 27 January 2020, at the opening of the Parliamentary Assembly session, the still unratified credentials of six parliamentary delegations – North Macedonia, Poland, Portugal, San Marino, Sweden and Switzerland – were challenged on procedural grounds, in accordance with Rule 7.1 of the Assembly's Rules of Procedure, by several members of the Assembly, on the ground that the composition of these delegations failed to meet the condition laid down in Rule 6.2 of the Rules of Procedure whereby national delegations must include the under-represented sex at least in the same percentage as is present in their parliaments.

2. Resolution 1781 (2010) "Requiring a minimum of 30% of each sex on Assembly's national delegations" amended Rules 6.2.a and 7.1.b of the Rules of Procedure and laid down new conditions regarding gender representation by strengthening the existing provisions to ensure more balanced participation of women and men.

3. The second sentence of Rule 6.2.a provides:

"National delegations shall include the under-represented sex at least in the same percentage as is present in their parliaments and, at a very minimum, one member of the under-represented sex appointed as a representative".

4. The failure to include at least one member of the under-represented sex as a representative in a national delegation is explicitly acknowledged in Rule 7.1.b. of the Rules of Procedure as a ground for challenging the credentials of the delegation in question:

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

5. However, the requirement for delegations to include the under-represented sex at least in the same percentage as is present in their parliaments is not sanctioned by Rule 7.1.b.

6. The Committee on Rules of Procedure, Immunities and Institutional Affairs must therefore examine whether the composition of the six delegations whose credentials have been challenged infringes the principles set out in Rule 6.2.a of the Assembly's Rules of Procedure.

7. Lastly, under the terms of Rule 7.2, "[i]f 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. Composition of the parliamentary delegations of North Macedonia, Poland, Portugal, San Marino, Sweden and Switzerland

2.1. The credentials of the members of the delegation of North Macedonia sent on 10 December 2019

8. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the parliamentary delegation of North Macedonia is entitled to 3 representatives and 3 substitutes. According to the report of the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 Ordinary Session of the Assembly (Doc. 15039 rev) the parliamentary delegation is composed as follows:

Representatives

Ms Shpresa HADRI (Democratic Union for Integration)

Mr Betian KITEV (Social Democratic Union of Macedonia)

Mr Nikola POPOSKI (VMRO – Democratic Party for Macedonian National Unity)

Substitutes

Mr Afrim GASHI (Movement BESA)
 Mr Antonijo MILOSHOSKI (VMRO-Democratic Party for Macedonian National Unity)
 Ms Frosina TASHEVSKA-REMENSKI (Social Democratic Union of Macedonia)

9. The credentials of the delegation were submitted by letter to the President of the Assembly dated 10 December 2019, in which it was specified that there had been no change in the composition of the delegation compared to 2019.

10. 47 women (39.17%) and 73 men sit in the Assembly of the Republic of North Macedonia. The delegation is made up of four men and two women (33.33%), one of whom is a representative.

2.2. The credentials of the members of the Polish delegation sent on 14 January 2020

11. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the Polish parliamentary delegation is entitled to 12 representatives and 12 substitutes. According to the report of the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 Ordinary Session of the Assembly (Doc. 15039 rev) the parliamentary delegation is composed as follows:

Representatives

Ms Iwona ARENT (Law and Justice (PiS))
 Mr Włodzimierz BERNACKI (Law and Justice (PiS))
 Mr Marek BOROWSKI (Civic Coalition (KO))
 Mr Tomasz LATOS (Law and Justice (PiS))
 Mr Daniel MILEWSKI (Law and Justice (PiS))
 Mr Arkadiusz MULARCZYK (Law and Justice (PiS))
 Mr Killion MUNYAMA (Coalition of Citizenship (KO))
 Mr Aleksander POCIEJ (Civic Platform (PO))
 Mr Jacek PROTASIEWICZ (KO – PSL – Kukiz'15)
 Mr Krzysztof ŚMISZEK (The Left)
 Mr Bogusław SONIK (Coalition of Citizenship (KO))
 Mr Dominik TARCZYŃSKI (Law and Justice (PiS))

Substitutes

Mr Marek AST (Law and Justice (PiS))
 Ms Kamila GASIUK-PIHOWICZ (Coalition of Citizenship (KO))
 Mr Zbigniew GIRZYŃSKI (Law and Justice (PiS))
 Ms Danuta JAZŁOWIECKA (Civic Coalition (KO))
 Mr Bogdan KLICH (Civic Platform (PO))
 Mr Kazimierz MATUSZNY (Law and Justice (PiS))
 Mr Krzysztof MRÓZ (Law and Justice (PiS))
 Ms Barbara NOWACKA (Coalition of Citizenship (KO))
 Mr Bolesław PIECHA (Law and Justice (PiS))
 Mr Jerzy POLACZEK (Law and Justice (PiS))
 Mr Andrzej SZEJNA (The Left)
 Mr Krzysztof TRUSKOLASKI (Coalition of Citizenship (KO))

12. The credentials of the delegation were submitted by letter to the President of the Assembly dated 14 January 2020. It is a new delegation, appointed by the new parliament arising from the parliamentary elections of 13 October 2019.

13. 132 women (28.7%) and 328 men sit in the Sejm, and 24 women (24%) and 76 men sit in the Senate. The delegation includes four women (16.6%), only one of whom is a representative.

2.3. The credentials of the members of the Portuguese delegation sent on 10 January 2020

14. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the Portuguese parliamentary delegation is entitled to 7 representatives and 7 substitutes. According to the report of the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 Ordinary Session of the Assembly (Doc. 15039 rev) the parliamentary delegation is composed as follows:

Representatives

Mr Pedro BACELAR DE VASCONCELOS (PS)
Ms Edite ESTRELA (PS)
Mr Carlos Alberto GONÇALVES (PSD)
Mr Luís LEITE RAMOS (PSD)
Ms Isabel MEIRELLES (PSD)
Ms Ana Catarina MENDES (PS)
Mr Paulo PISCO (PS)

Substitutes

Mr Pedro CEGONHO (PS)
Mr Telmo CORREIA (CDS-PP)
Mr António FILIPE (PCP)
Ms Catarina MARCELINO (PS)
Mr Paulo MONIZ (PSD)
Ms Isabel RODRIGUES (PS)
Mr Pedro Filipe SOARES (BE)

15. The credentials of the delegation were submitted by letter to the President of the Assembly dated 9 January 2020. It is a new delegation, appointed by the new parliament arising from the parliamentary elections of 6 October 2019.

16. 91 women (39.57%) and 139 men sit in the Assembly of the Republic. The delegation includes five women (35.71%), three of whom are representatives.

2.4. The credentials of the members of the Sanmarinese delegation sent on 16 January 2020

17. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the Sanmarinese parliamentary delegation is entitled to 2 representatives and 2 substitutes. According to the report of the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 Ordinary Session of the Assembly (Doc. 15039 rev) the parliamentary delegation is composed as follows:

Representatives

Ms Mariella MULARONI (PDCS)
Mr Marco NICOLINI (Movimento Civico R.E.T.E.)

Substitutes

Mr Gerardo GIOVAGNOLI (Noi per la Repubblica)
Mr Giuseppe Maria MORGANTI (Libera)

18. The credentials of the delegation were submitted by letter to the President of the Assembly dated 16 January 2020. It is a new delegation, appointed by the new parliament arising from the parliamentary elections of 8 December 2019.

19. 19 women (31.67%) and 41 men sit on the *Consiglio Grande e Generale*. The delegation includes just one woman (25%), who is a representative.

2.5. The credentials of the members of the Swedish delegation sent on 21 January 2020

20. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the Swedish parliamentary delegation is entitled to 6 representatives and 6 substitutes. According to the report of the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 Ordinary Session of the Assembly (Doc. 15039 rev) the parliamentary delegation is composed as follows:

Representatives

Ms Boriانا ÅBERG (Moderate Party)
 Ms Annicka ENGBLOM (Moderate Party)
 Mr Thomas HAMMARBERG (Social Democratic Party)
 Mr Momodou Malcolm JALLOW (Left Party)
 Ms Carina OHLSSON (Social Democratic Party)
 Mr Markus WIECHEL (Sweden Democrats)

Substitutes

Ms Ann-Britt ÅSEBOL (Moderate Party)
 Mr Alexander CHRISTIANSSON (Sweden Democrats)
 Mr Adnan DIBRANI (Social Democratic Party)
 Mr Arin KARAPET (Moderate Party)
 Mr Ola MÖLLER (Social Democratic Party)
 Ms Azadeh ROJHAN GUSTAFSSON (Social Democratic Party)

21. The credentials of the delegation were submitted by letter to the President of the Assembly dated 21 January 2020, in which it was specified that there had been no change in the composition of the delegation compared to 2019.

22. 161 women (46.13%) and 188 men sit in the *Riksdag*. The delegation includes five women (41.67%), three of whom are representatives.

2.6. The credentials of the members of the Swiss delegation sent on 21 January 2020

23. In accordance with Articles 25 and 26 of the Statute of the Council of Europe, the Swiss parliamentary delegation is entitled to 6 representatives and 6 substitutes. According to the report of the President of the Assembly on the examination of credentials of representatives and substitutes for the first part of the 2020 Ordinary Session of the Assembly (Doc. 15039 rev) the parliamentary delegation is composed as follows:

Representatives

Ms Sibel ARSLAN (The Greens)
 M. Olivier FRANÇAIS (The Liberals)
 M. Pierre-Alain FRIDEZ (Swiss Socialist Party)
 Mr Alfred HEER (Democratic Union of the Centre)
 M. Charles JUILLARD (Christian Democratic People's Party)
 Mme Ada MARRA (Swiss Socialist Party)

Substitutes

Mr Roland Rino BÜCHEL (Democratic Union of the Centre)
 M. Damien COTTIER (The Liberals)
 Mr Hannes GERMANN (Democratic Union of the Centre)
 M. Jean-Pierre GRIN (Democratic Union of the Centre)
 Mr Niklaus-Samuel GUGGER (Evangelical People's Party)
 M. Christian LEVRAT (Swiss Socialist Party)

24. The credentials of the delegation were submitted by letter to the President of the Assembly dated 21 January 2020. It is a new delegation, appointed by the new parliament arising from the parliamentary elections of 20 October 2019.

25. 12 women (26.09%) and 34 men sit on the Council of States, and 87 women (41.5%) and 117 men sit on the National Council. The delegation includes two women (17%), both of whom are representatives and members of the National Council.

3. **Conformity of the composition of the parliamentary delegations of North Macedonia, Poland, Portugal, San Marino, Sweden and Switzerland with the Assembly's Rules of Procedure**

26. The challenge to the credentials of the six national delegations is founded on a breach of Rule 6.2.a of the Rules of Procedure with regard to the composition of these delegations, on the ground that they do not include the under-represented sex at least in the same percentage as is present in their parliaments.

27. However, while Rule 6.2.a provides that "*National delegations shall include the under-represented sex at least in the same percentage as is present in their parliaments and, at a very minimum, one member of the under-represented sex appointed as a representative*", Rule 7.1.b – on which challenges to credentials are actually based, clearly restricts the possibility of challenging delegations' credentials solely to cases where they include "*in any case one member of the under-represented sex, appointed as a representative*".

28. The six national delegations whose credentials have been challenged clearly all fully meet the condition laid down in Rule 7.1.b of having at least one member of the under-represented sex appointed as a representative.

29. It is also worth noting that the credentials of the delegations whose composition is identical to that of the preceding session were not challenged in January 2019.

2.1. *Precedents*

30. It was in 2004 that the Assembly first examined a challenge of credentials relating to the lack of balanced representation between the sexes: there were no female members in the delegations of Ireland and Malta (having at least one member of the under-represented sex was an obligation under the Rules of Procedure at that time). The Assembly decided to ratify the credentials of the Irish and Maltese delegations but to combine this with the suspension of the voting rights of the members of the delegations concerned in the Assembly and its bodies until the composition of those delegations was brought into conformity with the Rules of Procedure.³

31. In the explanatory memorandum in that report, the Committee on Rules of Procedure considered that "it would go too far to declare in such a case the whole national delegation as being not in conformity with the Rules and to refuse ratification of the credentials of all members" and that "the Assembly cannot itself select which of the seats allocated to a national parliamentary delegation is not correctly filled and cannot arbitrarily declare the credentials of a certain delegation member as not ratified".

32. A second precedent was set in January 2011 when the Assembly examined a challenge on procedural grounds of the not yet ratified credentials of the parliamentary delegations of Montenegro, San Marino and Serbia, with the same root cause, namely that they did not include any woman appointed as a representative. The Assembly decided to ratify the credentials of the parliamentary delegations concerned but to suspend their members' right to vote in the Assembly and in its bodies as from the beginning of the next part-session and until such time as the composition of these delegations complied with the Rules of Procedure.⁴

33. On that occasion, the Committee on Rules of Procedure noted in its report,⁵ that, "for small parliaments, it may be difficult to ensure that the composition of parliamentary delegations complies with all the criteria laid down by the Rules of Procedure – fair representation of parties or political groups and gender representation. (...) The Committee also accepts that procedures in certain parliaments do not enable them to easily amend the composition of their parliamentary delegations insofar as those procedures provide for the appointment of delegations for the whole duration of the legislature, the consultation of or decision by the political groups, or the need for the composition to be ratified in plenary session".

³ See Doc. 10051, report of the Committee on Rules of Procedure and Immunities of 27 January 2004, and Resolution 1360 (2004).

⁴ Resolution 1789 (2011) and report of the Committee on Rules of Procedure, Immunities and Institutional Affairs of 24 January 2011 (Doc. 12488).

⁵ Op. cit., paragraph 23.

34. In June 2013, the Assembly examined a challenge to the credentials of the Icelandic parliamentary delegation, which comprised no female representative. The Assembly decided to adopt the same stance as it had in 2011 and ratify the credentials of the Icelandic delegation but suspend its members' voting rights with effect from the beginning of the following part-session if the composition of the delegation had not been brought into conformity with the Rules of Procedure by then.⁶

35. In January 2017, the Assembly applied the same “case law” regarding the challenge to the credentials of the Slovak parliamentary delegation, for the same reason – the fact that there was no female member appointed as a representative – and decided to ratify the credentials of the delegation, but to suspend the voting rights of its members in the Assembly and its bodies with effect from the beginning of the Assembly's following part-session, if the composition of the delegation had not been brought into conformity with the Rules of Procedure in the meantime.⁷

36. The same thing happened in January 2018, when the credentials of the Andorran delegation were challenged on the same grounds and the Assembly decided once again to ratify the credentials of the delegation, but to suspend the voting rights of its members in the Assembly and its bodies with effect from the beginning of the Assembly's following part-session, if the composition of the delegation had not been brought into conformity with the Rules of Procedure in the meantime.⁸

2.2. *Position of the Committee on Rules of Procedure*

37. The challenge to the credentials of six delegations made on 27 January 2020 is clearly intended to substitute the ground on which such a challenge should be based under the Rules of procedure. The goal is no longer to ascertain that a delegation meets the requirement to have one member of the under-represented sex appointed as a representative but to establish a requirement – which is not currently enforceable through the challenge of credentials procedure – for delegations to include women at least in the same percentage as is present in their parliaments.

38. To date the committee has been consistent in its interpretation of the provisions of Rule 7.1, read in conjunction with Rule 6.2.a.: it has only punished delegations which have not appointed a single woman as a representative. The Committee on Rules of Procedure does not have the authority to substitute one ground for another. It is strictly bound by the terms of the Rules of Procedure.

39. In Resolution 1585 (2007) on gender equality principles in the Parliamentary Assembly, the Assembly adopted a position of principle that national parliaments should ensure that their national delegations would include a percentage of women at least equal to that in their national parliaments “*with the aim of achieving, as a minimum, a 30% representation of women, bearing in mind that the threshold should be 40%*”.

40. In a report of 2010, the Committee on Rules of Procedure examined a proposal to amend the Rules of Procedure for it to incorporate a stronger requirement, namely an obligation for each national delegation to include a minimum of 30% of each sex.⁹ In this report, the Committee made the following point: “*simple arithmetical logic shows that a 30% minimum level of representation would lead to discrimination between delegations. Thus, in practice a minimum of 30% would require small delegations to appoint two of their four members from the under-represented sex, that is 50%. This ‘strengthened’ obligation would also be detrimental – albeit to a lesser extent – to eight and 14-member delegations*”.

41. Would it be “fairer” and “more just”, in terms of gender equality, if the San Marino delegation – challenged because only one of the four members is a woman, equating to 25% – included two women, making up 50% of the delegation, whereas the proportion of women sitting in parliament stands at 31%?

42. Moreover, and this is where such an interpretation of the Rules of Procedure might do more harm than good, the delegations from national parliaments where women are well represented stand to be penalised more heavily than delegations from parliaments where the representation of women is but a small fraction. Were we to follow the reasoning put forward, a delegation whose composition fell below the level of

⁶ Resolution 1944 (2013) and report of the Committee on Rules of Procedure, Immunities and Institutional Affairs of 25 June 2013 (Doc. 13246).

⁷ Resolution 2148 (2017) and report of the Committee on Rules of Procedure, Immunities and Institutional Affairs of 26 January 2017 (Doc. 14247).

⁸ Resolution 2205 (2018) and report of the Committee on Rules of Procedure, Immunities and Institutional Affairs of 23 January 2018 (Doc. 14475).

⁹ Report of the Committee on Rules of Procedure, Immunities and Institutional Affairs on “A minimum of 30% of each sex in Assembly national delegations” (Doc. 12260).

representation of women in parliament – for example a parliament comprising 49% women but with a delegation comprising only 47% women – could have its credentials challenged. Inversely, a delegation in which women make up 15% but representing a parliament with 7% female membership, would not have its credentials challenged.

43. Putting the onus on a strict numerical equation overlooks the fact that the composition of delegations is determined by a number of criteria, including fair representation of the parties and political groups, and it is not easy for national parliaments to form their – sometimes numerous – interparliamentary delegations while ensuring compliance with multiple and sometimes competing criteria.

3. Conclusions

44. As the credentials of six delegations have been challenged on the same basis and this concerns a question of principle, as the authors of the challenges have clearly pointed out, the committee should arrive at one and the same conclusion for all six.

45. At its meeting on 28 January 2020, the Committee on Rules of Procedure took a decision on these challenges. Following a discussion, during which various views were expressed, it decided to strictly apply Rule 7.1. of the Rules of Procedure and its own case-practice in assessing the compliance of the delegations concerned with the conditions laid down in the Rules of Procedure for the composition of delegations (and not to apply the criterion in Rule 6.2.). It considered, in accordance with Rule 10.1 of the Rules of Procedure, that the credentials of the parliamentary delegations concerned should be ratified.