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SUSPENSION, WITHDRAWAL AND EXPULSION OF A MEMBER STATE FROM THE COUNCIL OF EUROPE

Introduction

Membership of states in international organizations is a legal bond which gives rise to rights and obligations. They are implemented on the basis of the statutory provisions of a given international organization. In a situation where the implementation of these rights and obligations seems impossible, the membership ties are severed on the initiative of an international organization or a member state.

Establishing legal provisions on the basis of suspension of membership, withdrawal of a member state and its exclusion is not obligatory. Only the will of the founding state of a given international organization can give rise to a legal basis in this matter.

The Statute of the Council of Europe¹ already at the moment of its constitution contained legal norms concerning both the suspension of membership, the withdrawal of a member state and its exclusion. These are important legal provisions by which the Member State and the organization itself can prepare for the steps that will be required to properly carry out each procedure.

The aim of this study is to analyze the legal regulations in the CoE Statute concerning three institutions limiting or terminating membership in an international organization, along with an indication of examples from the practice of countries that have decided to initiate and carry

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¹ Statute of the Council of Europe of 5 May 1949, European Treaty Series (ETS), No. 1/6/7/8/11 [hereinafter: CoE Statute].

out the above-mentioned procedures. In this study, the analytical-legal and legal-comparative methods were used, which allowed for an appropriate interpretation of the statutory provisions and drawing conclusions about their application.

1. The Council of Europe

The Council of Europe (the CoE) is the oldest pan-European international organization. The initiative to establish it was born shortly after World War II as an attempt to prevent the repetition of its atrocities, and it was made concrete during the European Congress, which was held in 1948 in The Hague under the chairmanship of Winston Churchill. The federalist ideas expressed during Congress clashed with staunch resistance from the British, in particular reluctant to create a pan-European parliamentary assembly. Hence, the CoE Statute (the so-called London Treaty), signed on May 5, 1949 in London, also gave the organization an intergovernmental character [Turek 2017, 191-92].

Any European state with a democratic system, the rule of law, respecting human rights and fundamental civil liberties and able to comply with the provisions of the CoE Statute may become a member of the CoE. For this purpose, it should submit an application to the Secretary General, who forwards it to the decision-making body – the Committee of Ministers. There, an initial discussion on the proposal takes place, after which a recommendation for this country is adopted unanimously, then the motion goes to an advisory body – the Parliamentary Assembly, where a more in-depth examination is carried out. It is based on the fact that the Assembly sends its representatives to the candidate country to inspect the functioning of the democratic system, respect for human rights and the judiciary on the spot. From their observations, representatives of the Parliamentary Assembly prepare reports that are presented to the Assembly, which then adopts a recommendation by a two-thirds majority of votes. The proposal is returned to the Committee of Ministers and the final decision is made there (by a majority of two-thirds of the votes) [Gawłowicz 1998, 34-35].

2. Suspension of membership in the Council of Europe

The legal basis for initiating the suspension procedure is contained in the CoE Statute. Pursuant to Article 8, “Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.” Both conditions must be met cumulatively. Thus, a suspension is announced with immediate effect and is the phase leading up to a possible call for withdrawal [Dyńia 2020, 46].

Article 8 CoE Statute contains a reference to the rules of functioning of the CoE, violation of which conditions the initiation of proceedings for suspension. According to Article 3 CoE Statute “each member of the Council of Europe recognizes the principle of the rule of law and the principle that all persons within its jurisdiction shall enjoy human rights and fundamental freedoms; it must also sincerely and profoundly collaborate to achieve the purpose of the Council as set out in Chapter I.” As C. Mik observes, it is not about the rules determining the international legal status of the member states, but rather about the European character of states and about rules that are to determine the internal condition of member states. Democracy, the rule of law and human rights are three closely interrelated areas that allow to determine the state of functioning of the state [ibid., 38].²

Therefore, it is worth noting that the legal basis of the proceedings concerning the suspension of the powers of the member states belonging to the CoE refers to non-financial considerations. Its key element are violations of the rules of functioning of the organization and its members. The nature of acts contrary to Article 8 CoE Statute is subject to individual assessment, and the limitation of rights resulting from the conducted suspension procedure is not obligatory.

² See also: Latoszek 2001, 312; Małobęcka, Porzeżyńska 2018, 187; Barcik 2019, 57. The 2011 Report of the European Commission for Democracy through Law, p. 34, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-RA\(2011\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-RA(2011)001-e) [accessed: 11.03.2022].

The CoE was forced to use the suspension procedure in relation to three states. The first state was Greece (the Council initiated the procedure leading to the suspension of Greece in reaction to the coup in 1967, which resulted in the seizure of power by the military junta. Greece, however, left the CoE and returned to it in 1974 after the restoration of democracy), followed by Turkey (deprived of the right to vote in the Assembly in 1980-1984 as a reaction to the military coup d'état), followed by the Russian Federation (suspended from voting rights in the Assembly in 2000-2001 as a consequence of actions in Chechnya). Also in 2014, sanctions were imposed on the Russian Federation in the form of suspending the voting rights of its representatives in the Parliamentary Assembly in connection with the annexation of Crimea. In turn, between 2000 and 2001, the Parliamentary Assembly repeatedly threatened Ukraine with suspension and then expulsion for failure to comply with commitments made at the time of accession. These were in particular the refusal to introduce a moratorium on the death penalty and the failure to undertake the promised legislative and institutional reforms. It was similar in the case of Russia. In subsequent recommendations, the Parliamentary Assembly of the CoE called on Russia to end "massive restrictions on human rights," which violate the country's obligations as a member of the Council, and threatened to suspend it. The possibility of bringing an inter-state complaint, provided for in Article 33 of the European Convention on Human Rights.³ However, the Committee of Ministers of the CoE believed that there was no need to take steps aimed at depriving Russia of membership in the CoE. It recognized that the organization could contribute to the restoration of human rights guarantees in Chechnya only if Russia remained a member [ibid., 46].⁴

In addition, the suspension procedure was repeated against Russia, due to its aggressive attack against Ukraine on February 24, 2022. On February 25, 2022, Ukraine and Poland submitted a motion to suspend this country's membership. As a result of this, the Committee of Ministers immediately decided to suspend membership, thus wanting to influence Russia's actions that violated its statutory provisions.⁵

³ European Treaty Series (ETS), No. 5 [hereinafter: ECHR].

⁴ See Zareba 2018, 36; Royer 2010, 39.

⁵ Decision of the Committee of Ministers of the Council of Europe of 25 March 2022

3. Withdrawal of a member state from the Council of Europe

Some organizations depend on the end of the current financial or calendar year, such as the CoE. Pursuant to Article 7 CoE Statute, “any member of the Council of Europe may withdraw from it by notifying its decision to the Secretary General.” However, withdrawal shall not take place immediately, but only at the end of the financial year in which it is notified, provided that it is done in the first nine months of that year, or at the end of the following financial year if the notification is made in the last three months of that year [Benoit-Rohmer and Klebes 2006, 41].

The procedure for withdrawing from the CoE was effectively used by Greece under the colonels’ dictatorship. Following the military coup of April 21, 1967, which overthrew the legal government and introduced an authoritarian regime openly contrary to the democratic principles defended by the CoE, the Parliamentary Assembly asked the Committee of Ministers to take measures under Article 8 CoE Statute. At the same time, the Scandinavian states and the Netherlands brought an interstate complaint against Greece under the ECHR. Faced with the prospect of expulsion, Greece chose a dramatic solution. In a last-minute statement at the session of the Committee of Ministers in Paris on December 12, 1969, Greece announced its withdrawal from the CoE [ibid.]. It returned to the organization in 1974 after the overthrow of the military junta [Doliwa-Klepcki 1975, 101].

It is also worth pointing to the current situation of Russia, which also formally initiated the procedure of withdrawal from the CoE on March 15, 2022 due to concerns about its possible exclusion due to an aggression attack carried out in Ukraine from February 24, 2022. A letter from Russian Foreign Minister Sergei Lavrov, informing about this decision, was forwarded to the Parliamentary Assembly of the CoE by Peter Tolstoy, chairman of the Russian delegation to the Assembly. However, the notification of the willingness to speak did not break the membership ties on the initiative of Russia, due to its later exclusion from the initiative of the CoE.⁶

on the suspension of the membership of the Russian Federation in the Council of Europe, <https://rm.coe.int/native/0900001680a5a360> [accessed: 19.03.2022].

⁶ <https://www.gazetaprawna.pl/wiadomosci/swiat/artykuly/8380231,rosja-wystepuje-z-rady->

4. Exclusion of a member state from the Council of Europe

The legal basis for the exclusion of a member state from the CoE is set out in the statute and is also derived from another organizational sanction in the form of suspension (Article 8 CoE Statute). Legal experts remain divided on the interpretation of the above-mentioned provision. Some are convinced that the suspension and removal procedures (summons to stand) are separate. Others, in turn, believe that, in addition to the very specific procedure under Article 9 of the CoC Statute, the suspension is the stage that precedes the exclusion that cannot take place without prior suspension. The latter interpretation seems more convincing because Article 8 indicates that the state may be “suspended and summoned.” It is therefore a question of conditions that must be met cumulatively and not alternatively. Thus, a suspension is announced with immediate effect and is the phase leading up to a possible call for withdrawal [Benoit-Rohmer and Klebes 2006, 41].

So far, there has been only one situation where the CoE would effectively exclude a Member State. On March 16, the Committee of Ministers of the CoE, during a special session in Strasbourg, unanimously adopted a resolution excluding the Russian Federation from the CoE on March 16, 2022. The resolution stated that Russian aggression against Ukraine was a drastic violation of Article 3 of the Statute CoE, which obliges member states to cooperate in achieving the organisation’s goals.⁷

The resolution of the Committee of Ministers of the CoE was preceded by the strong opinion of the Parliamentary Assembly of the CoE of March 15, 2022, stating that Russia had committed serious violations of the Statute CoE, inconsistent with the status of a member state. The Parliamentary Assembly of the CoE also expressed support for the sovereignty, independence and territorial integrity of Ukraine within its internationally recognized borders.⁸

europy-lawrow.html [accessed: 19.03.2022].

⁷ Resolution of the Parliamentary Assembly of the Council of Europe of 16 March 2022, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a5da51 [accessed: 19.03.2022].

⁸ Opinion of the Parliamentary Assembly of the Council of Europe of March 15, 2022, available at: <https://pace.coe.int/pdf/1fbc3d7b82fe84413f7753a837f8c664de0aec5c3eebbc5b08e2448fb47149cd/opinion%203000.pdf> [accessed: 19.03.2022].

It should be noted, however, that on December 5, 2017, the Committee of Ministers of the CoE initiated an exclusion proceeding against Azerbaijan in connection with his failure to implement the judgment issued by the European Court of Human Rights in 2014.⁹ In this judgment, the Court stated that the arrest of a prominent Azerbaijani opposition politician was unlawful and that the actual purpose of such actions was to punish him for criticizing the government. In the absence of any reaction from Azerbaijan to repeated calls for the release of Ilgar Mammadov, the Committee of Ministers, pursuant to Article 46, section 4 ECHR referred the case to the Court in order to determine the legality of Azerbaijan's conduct in the form of non-compliance with the judgment. It was the first time in the history of the CoE that a procedure was initiated against a Member State as a result of failure to comply with a court judgment. Importantly, if the infringement procedure does not bring concrete results, the state should take into account the necessity to suspend its powers or to exclude it [Dzehtsiarou and Coffey 2019, 444].

Summary

A member state of the CoE is bound to submit to the provisions of the founding act. In a situation where the statutory assumptions are in conflict with his interests, it may decide to leave the CoE structures. As history shows, such a practice has taken place (Greece, Russia). If, on the other hand, an international organization finds that the membership of a given state interferes with its functioning, then it can independently take steps to eliminate it. Such actions are currently being taken by the CoE, which both decided to suspend Russia's membership and decide to exclude it in the next step. These proceedings constitute an organized sanction, the purpose of which is to identify specific actions that are contrary to the objectives of the CoE and cause the Russian Federation to stop taking such actions.

⁹ Judgment of the European Court of Human Rights of 22 May 2014, ref. no. 15172/13, Lex no. 1460861, *Ilgar Mammadov v. Azerbaijan*.

REFERENCES

- Barcik, Jacek. 2019. *Ochrona praworządności w Radzie Europy i Unii Europejskiej ze szczególnym uwzględnieniem niezależności sądów i niezawisłości sędziów*. Warszawa: Wydawnictwo C.H. Beck.
- Benoit-Rohmer, Florence, and Heinrich Klebes. 2006. *Prawo Rady Europy. W stronę ogólnoeuropejskiej przestrzeni prawnej*. Warszawa: Scholar.
- Doliwa-Klepacki, Zbigniew M. 1975. *Encyklopedia organizacji międzynarodowych*. Warszawa: Książka i Wiedza.
- Dynia, Elżbieta. 2020. "Zasada demokracji, praworządności i poszanowania praw człowieka jako warunek członkostwa w Radzie Europy." *Stosunki Międzynarodowe* 4:35-49.
- Dzehtsiarou, Konstantin, and Donal K. Coffey. 2019. "Suspension and expulsion of members of the Council of Europe: difficult decisions in troubled Times." *International and Comparative Law Quarterly* 68, no. 2:443-76.
- Gawłowicz, Izabela. 1998. *Wybrane organizacje międzynarodowe*. Szczecin: Albatros.
- Latoszek, Ewa. 2001. "Rada Europy." In *Organizacje międzynarodowe. Założenia. Cele. Działalność*, edited by Ewa Latoszek, and Magdalena Proczek, 311-49. Warszawa: Elipsa.
- Małobęcka, Iga, and Magdalena Porzeżyńska. 2018. "Ochrona praworządności w Unii Europejskiej – węzłowe problemy." *Przegląd Europejski* 1:183-93.
- Royer, Aline. 2010. *The Council of Europe*. Strasbourg: Wydawnictwo Rady Europy.
- Turek, Piotr. 2017. "Rada Europy." In *Organizacje międzynarodowe*, edited by Brygida Kuźniak, Marcin Marcinko, and Milena Inglevic-Citak, 189-241. Warszawa: Wydawnictwo C.H. Beck.
- Zaręba, Szymon. 2018. "Rosja w Radzie Europy: skutki potencjalnych ustępstw." *Biuletyn Polskiego Instytutu Spraw Międzynarodowych* 41:36-42.

**Suspension, Withdrawal and Expulsion of a Member State
from the Council of Europe**

Abstract

Membership of states in an international organization may be limited through a suspension procedure, or it may be terminated by the withdrawal of a member state or its exclusion. Pursuant to the statutory provisions of the Council of Europe, each of the above-mentioned procedures has been legally regulated. The current example of a member state that has been suspended in its powers and then excluded is Russia, which committed an act of aggression in Ukraine on February

25, 2022. The country also decided to initiate the withdrawal procedure from the Council of Europe in order to prevent a later exclusion, but the exclusion procedure was immediately carried out, which prevented the Russian Federation from successfully withdrawing from the Council of Europe.

Keywords: international organization, Council of Europe, state, membership

Zawieszenie, wystąpienie i wykluczenie państwa członkowskiego z Rady Europy

Abstrakt

Członkostwo państw w organizacji międzynarodowej może zostać ograniczone za pośrednictwem procedury zawieszenia, może być też zakończone poprzez wystąpienie państwa członkowskiego lub też jego wykluczenie. Na gruncie postanowień statutowych Rady Europy każda z wyżej wskazanych procedur została prawnie uregulowana. Aktualnym przykładem państwa członkowskiego, które zostało zawieszono w swoich uprawnieniach, a w następnej kolejności wykluczone jest Rosja, która dokonała aktu agresji na Ukrainie 25 lutego 2022 r. Państwo to zdecydowało również o uruchomieniu procedury wystąpienia z Rady Europy, chcąc zapobiec późniejszemu wykluczeniu, jednak postępowanie o wykluczenie zostało natychmiastowo przeprowadzone, przez co Federacja Rosyjska nie zdążyła skutecznie wystąpić z Rady Europy.

Słowa kluczowe: organizacja międzynarodowa, Rada Europy, państwo, członkostwo

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