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Mechanisms to ensure women's participation in decision-making

Opinion¹
Committee on Rules of Procedure and Immunities
Rapporteur: Mrs Ana Catarina Mendonça, Portugal, Socialist Group

I. Conclusions of the Committee

The Committee on Rules of Procedure and Immunities considers that paragraphs 8.2 and 8.3 of the draft resolution contained in Doc.10743 are not procedurally sound. However, as the aim of ensuring a better representation of both sexes in the institutions of the Council of Europe and in its decision-making process is most important, the Committee suggests a compromise amendment. The Committee considers that the question of representation of each sex in the Council of Europe institutions is quite complex and that appropriate consultations of all those concerned would be needed to achieve practical results. It would therefore be preferable to devote a separate report to this matter.

II. Proposed amendment to the draft resolution

In the draft resolution, replace subparagraphs 8.2 and 8.3 with the following text:

“To prepare a report, in consultation with those involved in the respective election procedures, on how the representation of both sexes can be realised for candidates to the European Committee for the Prevention of Torture, the posts of Human Rights Commissioner, Secretary General and Deputy Secretary General of the Council of Europe and Secretary General of the Assembly.”

¹ See Doc. 10743 tabled by the Committee on Equal Opportunities for Women and Men

I. Introduction

1. On 12 September 2005, the Committee on Equal opportunities for Women and Men approved a report and adopted a draft resolution and a draft recommendation on Mechanisms to ensure women's participation in decision-making (Doc. 10743). By decision of the Bureau of 25 November 2005, the report was referred to the Committee on Rules of Procedure and Immunities for opinion.
2. The objective is to give an opinion on some of the points of procedural nature raised in the draft resolution contained in the report prepared by the Committee on Equal opportunities for Women and Men, in particular paragraphs 8.2. and 8.3.
3. This document will first outline the problems posed by the abovementioned paragraphs before specific proposals will be made.

II. Procedural questions at hand

4. The paragraphs of the draft resolution which raise procedural questions read as follows:

"The Assembly decides to ensure full implementation of the principle of balanced participation by women and men in decision-making processes in the Council of Europe and its organs and bodies and therefore decides:

[...]

- 8.2. not to consider lists of candidates submitted by the Committee of Ministers for the post of Commissioner for Human Rights that do not include at least one candidate of each sex,
- 8.3. to proceed in the same manner for any other election for which the Assembly is responsible involving more than one candidate."

5. These paragraphs seem to raise several issues for the Human Rights Commissioner, the President and Vice-Presidents of the Assembly as well as the Secretary General and Deputy Secretary General of the Council of Europe and Secretary General of the Parliamentary Assembly.

i. The Human Rights Commissioner

6. Art. 9 of the Resolution (99) 50 states that:

"1. The commissioner shall be elected by the Parliamentary Assembly by a majority of votes cast from a list of three candidates drawn up by the Committee of Ministers.

2. Member states may submit candidatures by letter addressed to the Secretary General. Candidates must be nationals of a member state of the Council of Europe."

7. Thus, the provision clearly does not provide for candidates of each sex to appear on the list of the three candidates but unisex lists are possible.

8. In fact, that is what happened in October 2005. From an initial "long list" of ten candidates, including one woman, proposed by governments and one autonomous candidate, the Committee of Ministers submitted three male candidates to the Assembly. The consequence for that particular election of the proposition of the Committee on Equal Opportunities for Women and Men would therefore have been that that list had not been admissible from the Assembly's point of view. Furthermore, the procedure would have had to be discontinued in order to find and present a female candidate.

9. It is to be recalled that for the 1999 election of a Human Rights Commissioner, the list of candidates submitted to the Assembly included one man and two women.

10. While the Assembly has no right to change rules adopted by the Committee of Ministers, it has the right to decide how it organises its own elections. The Assembly has already decided for the procedure of the election of judges to the European Court of Human Rights (ECHR) that it would not consider lists of candidates that do not include at least one candidate of each sex, except when the candidates belong to the sex which is under-represented in the Court, i.e. the sex to which under 40 % of the total number of judges belong (Resolutions 1366 (2004) and 1426 (2005)). It should also be mentioned that the Assembly's Committee on Legal Affairs and Human Rights is preparing a report on the Human Rights Commissioner – stocktaking and perspectives.

ii. The members of the European Committee for the Prevention of Torture

11. Article 5 of the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment stipulates that “the members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals”.

12. This means that the Committee of Ministers elects the members of the Committee and that the Bureau of the Assembly forwards to the Committee of Ministers the list of candidates. The procedure is therefore exactly the contrary in comparison to the lists of candidates for the post of judges to the ECHR.

13. According to the above mentioned convention, the Bureau of the Assembly is not bound to submit a list of candidates of each sex. The Bureau is however free to impose such a rule on itself, particularly as it should pursue the general aim of the Assembly to increase gender-balance in the activities of the Council of Europe.

14. Therefore it could be envisaged that the Assembly addresses a recommendation to the Bureau and/or the national delegations to see to it that wherever possible candidates of each sex are proposed. Obviously, the Assembly could also take a more far-reaching decision.

iii. The Secretary General and Deputy Secretary General of the Council of Europe and the Secretary General of the Parliamentary Assembly

15. Contrary to the elections mentioned above, the election of the three “hors cadre” of the Council of Europe is governed by special regulations. These were adopted and updated by the Committee of Ministers with the agreement of the Assembly.

16. The regulations contain detailed provisions concerning

- submission of candidatures;
- criteria determining the choice of candidates;
- examination of candidates;
- nomination of candidates.

17. In these regulations, there is no mention of the inclusion of candidates of each sex, though admittedly the regulations in their initial version stem from 1956.

18. At the time of their drafting and adoption, these regulations had a rather complete character and they are the result of a common effort of the Committee of Ministers and the Assembly. Therefore, the Assembly cannot introduce unilaterally new provisions concerning the representation of each sex among the candidates. However, it does appear possible to renegotiate the regulations fifty years after their adoption.

iv. The President and the Vice-Presidents of the Assembly

19. The Rules of Procedure of the Assembly regarding the election of the President and Vice-Presidents of the Assembly (rules 13 and 14) do not specify the sex of the candidates for the positions. However, Rule 14.3 stipulates that a “representative or substitute may be elected vice-president [...] while taking into account the principle of gender equality”.

20. This rule therefore underlines the importance of having candidates of each sex without making it mandatory. While regularly only one candidate is proposed for Assembly Vice-Presidencies, nothing in the Rules prohibits further candidatures. For the election of the President of the Assembly candidatures are possible until 48 hours before the opening of the session at the latest (Rule 13.1), that is until 3 pm on Saturday preceding the session. If the text in the draft resolution paragraph 8.3. was adopted, this is likely to create practical problems as regards finding a female candidate.

21. The procedure proposed in the draft resolution for the election of the President and the Vice-Presidents of the Assembly would introduce gender balance amongst possible candidates for these important positions. Although this is highly desirable it would be incompatible with the Rules of Procedure to change them without following the procedure prescribed in Rule 65.

III. Conclusions

22. The consequences from the point of view of the Rules of Procedure of the Assembly for the proposals in paragraphs 8.2. and 8.3. of the draft resolution contained in the report by the Committee on Equal Opportunities between Men and Women would therefore be the following.

23. As regards the Commissioner for Human Rights the proposal made in paragraph 8.2 of the draft resolution is probably inspired by the provisions introduced by the Assembly for the lists with candidates at the ECHR. These lists have to contain representatives of each sex, except where the candidates belong to the sex under-represented in the Court (less than 40%). However there is a difference between both election procedures. Whereas, in the case of judges, the lists of candidates are presented by Member States, the list of candidates for the Commissioner (“short list”) is submitted by the Committee of Ministers to the Assembly. If the proposal in paragraph 8.2 of the draft resolution was adopted and if for the next election of the Commissioner the Committee of Ministers presented a unisex list of candidates, the Assembly would not be able to proceed to the election. This would then provoke an institutional crisis and paralyse the Office of the Commissioner. Therefore, while being important for ensuring a better representation of both sexes in the decision-making process in the Council of Europe, the Committee considers that the proposal in paragraph 8.2 of the draft resolution is not desirable.

24. Concerning the members of the Committee on the Prevention of Torture, there is currently no obligation that the list of candidates submitted by the Bureau of the Assembly to the Committee of Ministers should contain candidates of each sex. However, it could be envisaged that the Assembly addresses a recommendation to the Bureau and/or the national delegations to see to it that wherever possible candidates of each sex are proposed. It could also take a more far-reaching decision. Nevertheless, this matter is not explicitly covered by paragraph 8.3. and does not raise an issue with respect to the Rules of Procedure.

25. The regulations concerning the election of the Secretary General and the Deputy Secretary of the Council of Europe and the Secretary General of the Assembly have been mutually agreed by the Committee of Ministers and the Assembly. The Assembly cannot unilaterally introduce new provisions concerning the representation of each sex among the candidates. Thus, the proposals in the draft resolution are in the view of the Committee not admissible. Renegotiating these provisions or coming to a gentleman’s agreement with the Committee of Ministers would however be possible.

26. As regards the President and the Vice-Presidents of the Assembly, it would be incompatible with the Rules of Procedure to change the provisions relating to these elections without following the procedure prescribed in Rule 65 of the Rules of Procedure. Thus the Committee considers that these proposals are not admissible.

27. In conclusion, the Committee on Rules of Procedure and Immunities proposes to consider paragraphs 8.2 and 8.3 of the draft resolution contained in Doc.10743 as not procedurally sound. However, as the aim of ensuring a better representation of both sexes in the institutions of the Council of Europe and in its decision-making process is most important, the Committee suggests a compromise amendment. It considers that the question of representation of each sex in the Council of Europe institutions is quite complex and that appropriate consultations of all those concerned would be needed to achieve practical results. It would therefore be preferable to devote a separate report to this matter.

As far as the representation of both sexes in the Assembly's organs and decision-making processes is concerned, a specific report is already under preparation in the Committee on Rules of Procedure and Immunities.

28. The compromise amendment in view of replacing paragraphs 8.2 and 8.3 of the draft resolution could therefore be worded as follows:

“To prepare a report, in consultation with those involved in the respective election procedures on how the representation of both sexes can be realised for candidates to the European Committee for the Prevention of Torture, the posts of Human Rights Commissioner, Secretary General and Deputy Secretary General of the Council of Europe and Secretary General of the Assembly.”

28. The Committee has approved these conclusions and the proposed compromise amendment.

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Reporting Committee: Committee on Equal Opportunities for Women and Men

Committee for opinion: Committee on Rules of Procedure and Immunities

Reference to committee: Doc. 9865 and 9866, Reference No. 3158 of 25 November 2005

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Secretaries of the Committee: Mr Mario Heinrich, Mrs Linda Nylund