

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

Doc. 10865
28 March 2006

Obligation of new members of the Assembly relating to the aims and basic principles of the Council of Europe

Report
Committee on Rules of Procedure and Immunities
Rapporteur Mr Van Overmeire, Belgium, Not belonging to a political Group of the Assembly

Summary

This report was prepared following an instruction contained in Assembly Resolution 1443 (2005). It proposes that henceforth, when credentials are forwarded to the Assembly by the competent national authorities, they should be accompanied by statements of individual members that they subscribe to the aims and basic principles of the Council of Europe. In case a member refuses to make such a statement it would be possible to challenge his/her credentials. To implement these proposals, the draft resolution submits the necessary amendments to the Assembly Rules of Procedure.

A. Draft resolution

1. In its Resolution 1443 (2005) the Assembly agreed to consider inserting a provision in the Rules of Procedure of the Assembly stating that the credentials of the members of a national delegation can only be accepted upon the making or signing of a solemn statement by the individual members affirming to subscribe to the aims and the basic principles of the Council of Europe. It also instructed the Committee on Rules of Procedures to elaborate the modalities for the insertion of the necessary provisions in the Rules.
2. Given the Assembly's position in the institutional system of the Council of Europe and the fact that it acts through its members, it may reasonably be expected from the individual members of the Parliamentary Assembly that they subscribe to the aims and the basic principles of the Council of Europe, as they are mentioned in the Preamble, Article 1.a. and Article 3 of the Statute.
3. When credentials are forwarded to the Assembly by the competent national authorities, they should be accompanied by statements of individual members that they subscribe to the aims and basic principles of the Council of Europe. Should a member refuse to make such a statement, a specific provision of the Rules of Procedure should allow contesting the credentials of that member.
4. This new provision should only apply to members having joined the Assembly after the adoption of this resolution.
5. Consequently, the Assembly decides to:
 - 5.1. insert the following new subparagraph in the Rules of Procedure of the Assembly after Rule 6.2:

"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'.";
 - 5.2. insert the following new indent in the Rules of Procedure after Rule 7.1 b:

"the absence of a solemn statement as mentioned in Rule 6.2.b."
6. The Assembly also decides that the new provisions shall enter into force at the opening of the January 2007 part-session¹.

¹ When at the opening of that part-session the credentials of representatives and substitutes will have to be submitted to the Assembly, they should be accompanied by a signed written declaration. Afterwards, new Assembly members shall have to sign such a declaration.

B. Explanatory memorandum by Mr van Overmeire

I. Introduction

1. In the Parliamentary Assembly sitting of 26 April 2004, the credentials of the Serbia and Montenegro delegation were challenged on substantial grounds in accordance with Rule 8 of the Rules of Procedure. The challenge was based on the fact that two parties represented in the delegation were led by persons being tried for war crimes and genocide at the International Criminal Tribunal for war crimes in the former Yugoslavia (ICTY) based in The Hague. Eventually, in Resolution 1370 (2004), the Assembly ratified the credentials of the parliamentary delegation of Serbia and Montenegro, as it considered it inappropriate not to ratify the credentials of the *whole* delegation of Serbia and Montenegro because of *individual* members of this delegation.

2. In its Resolution 1370 the Assembly also resolved to adapt its Rules of Procedure as quickly as possible in order to allow the credentials of individual members to be contested on substantial grounds so that democratic forces in a given delegation do not suffer from restrictions on credentials.

II. The follow-up to Resolution 1370 (2004) and the adoption of Resolution 1443 (2005)

3. Following the instruction contained in Resolution 1370, the Committee on Rules of Procedure and Immunities elaborated a report which led to the adoption on 6 June 2005, of Resolution 1443 (2005) on the "*Challenge of credentials of individual members of a national delegation to the Parliamentary Assembly on substantive grounds*". The resolution contains an examination of the pros and cons of introducing a possibility in the Parliamentary Assembly's Rules of Procedure to ban individual members of national parliaments having expressly identified themselves with the activities and programmes of parties opposing the Council of Europe values from becoming Assembly Representatives and Substitutes.

4. In conclusion, the Assembly agreed in Resolution 1443 to "consider inserting a provision in the Rules of Procedure of the Assembly stating that the credentials of the members of a national delegation can only be accepted upon the making or signing of a solemn statement by the individual members affirming to subscribe to the aims and the basic principles of the Council of Europe, mentioned in Article 3 of and the Preamble to the Statute of the Council of Europe."

5. Article 3 of the Statute of the Council of Europe reads: "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 collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter 1."

6. The preamble of the Statute refers to basic principles in indents 2-4:

"Convinced that the pursuit of peace upon justice and international co-operation is vital for the preservation of human society and civilisation";

"Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy" ;

"Believing that, for the maintenance and further realisation of there ideals and in the interests of economic and social progress, there is a need of a closer unity between all like-minded countries of Europe."

7. Furthermore, Resolution 1443 (2005) instructed the Committee on Rules of Procedure and Immunities to elaborate the practical modalities for the insertion of a provision in the Rules and to report within a year after the adoption of the resolution.

8. This draft report was prepared accordingly.

C. Proposals for the signing of a solemn statement and for new rules

i. Signing of a written statement

9. The Committee considers that for an international parliamentary institution such as the Parliamentary Assembly, it would be more appropriate that all members sign a written solemn statement rather than make the statement as was also suggested in Resolution 1443.

10. The statement would have to cover both the principles and the aims of the Council of Europe.

11. According to Article 1a of the Statute, "the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress". Article 1.b. of the Statute states that this aim "shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisations of human rights and fundamental freedoms"

12. Articles 22 and 23 of the Statute relates to the Assembly's position within the Council of Europe. According to Article 22 of the Statute, "the Consultative (Parliamentary) Assembly of the Council of Europe is the deliberative organ of the Council of Europe. It shall debate matters within its competence under this Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers." Article 23.a. of the Statute states that, "the Consultative (Parliamentary) Assembly may discuss and make commendations upon any matter within the aim and scope of the Council of Europe as defined in Chapter I."

13. Given the Assembly's position in the institutional system of the Council of Europe and the fact that it acts through its members, it may reasonably be expected from the individual members of the Parliamentary Assembly that they subscribe to the aim and the basic principles of the Council of Europe, as mentioned in the Preamble, Article 1.a. and Article 3 of the Statute.

14. The Parliamentary Assembly of the Council of Europe would be the first "international parliament" to establish a procedure of this kind. There are no examples to be found in similar organisations (e.g. the Parliamentary Assembly of the OSCE or the Assembly of the Western European Union). In the European Parliament, composed of Members elected by direct universal suffrage in each member state of the European Union, there are no provisions regarding taking of an oath or signing a solemn statement.

ii. Proposed modification of the Rules of Procedure

15. In some of the national parliaments where a parliamentary oath is required (e.g. Luxembourg, Netherlands, Romania, the United Kingdom) the relevant provisions establish that the mandate of the member only starts after he/she has taken the oath. In the case of the Parliamentary Assembly, the Committee proposes, in accordance with Resolution 1443 (2005), that when credentials are forwarded to the Assembly by the competent national authorities they should be accompanied by statements of individual members that they subscribe to the aims and basic principles of the Council of Europe.

16. Consequently, the following new subparagraph should be inserted in the Rules of Procedure of the Assembly after Rule 6.2:

"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'".

17. There is a possibility that a member refuses to make such a statement. Due to the gravity of such an omission the Committee proposes that a specific provision of the Rules of Procedure should allow contesting the credentials of that member. Therefore, the following new indent should be inserted in the Rules of Procedure after Rule 7.1 b:

“the absence of a solemn statement as mentioned in Rule 6.3.”

iii. Entry into force of the proposed new provisions

18. The new provisions should enter into force at the opening of the January 2007 part-session. When at the opening of that part-session the credentials of representatives and substitutes will have to be submitted to the Assembly (Rule 6 of the Rules of Procedure), they should be accompanied by a signed written statement by members, according to paragraph 16 above. Afterwards all new members of the Assembly shall have to make such a written statement.

IV. Final remark

19. The Committee on Rules of Procedure and Immunities has unanimously adopted the draft resolution contained in this draft report. It has agreed to present the report to the Standing Committee on 29 May 2006.

Reporting Committee: Committee on Rules of Procedure and Immunities

Reference to Committee: Resolution 1443 (2005)

Draft resolution unanimously adopted on 15 March 2006

Members of the Committee: Mr Andreas **Gross** (Chair), Mr Andrea Manzella (1st Vice-Chair), Mrs Ganka Samoilovska-Cvetanova (2nd Vice-Chair), Mr Mats Einarsson (3rd Vice-Chair), Mr Sándor Albert, Mr Alexander Arabadjiev, Mr Birgir Ármannsson, Mrs Olena Bondarenko, Mrs Anne Brasseur, Mr Erol Aslan **Cebeci**, Mr Manlio Collavini, Mrs Helen d'Amato, Mr Miljenko Dorić, Mr Adolfo **Fernández Aguilar**, Mr Herbert Frankenhauser, Mr Tihomir Gligorić, Mr John **Greenway**, Mrs Arlette Grosskost, Mr Gerd Höfer, Mr Ali Huseynov, Mr Tomáš Jirsa, Mr Armand Jung, Mr Erik Jurgens, Mr Tibor Kékesi, Mrs Mojca **Kucler-Dolinar**, Mr Markku **Laukanen** Mr Jan Filip Libicki, Mr Alan Meale (alternate: Mr Rudi **Vis**), Mrs Ana Caterina **Mendonça**, Mr Jakob-Axel Nielsen, Mr Nikolaos Nikolopoulos, Mr Alexey Ostrovsky (alternate: Mr Valery **Grebennikov**), Ms Eli Sollied Øveraas, Mrs Maria **Postoico**, Mr Christos Pourgourides, Mrs Valentina Radulović-Scepanović, Mr Armen Rustamyan, Mr Peter **Schieder**, Mr Yuri **Sharandin**, Mr Gintaras **Šileikis**, Mrs Rodica Mihaela **Stănoiu**, Mr Karin **Van Overmeire**, Mr G. V. Wright (alternate: Mr Paschal **Mooney**)

Secretaries: Mr Mario Heinrich, Ms Linda Nylund