

Doc. 11067
5 October 2006

Candidates for the European Court of Human Rights

Motion for a resolution
presented by Mrs Bemelmans-Videc and others

This motion has not been discussed in the Assembly and commits only the members who have signed it

1. In January 2004 the Assembly adopted Recommendation 1649 (2004) and Resolution 1366 (2004). In these texts, it confirmed the necessity to keep the procedure of selection which had been set up in 1996. It also emphasised the need for candidates to possess the required level to exercise the function of judge by virtue of Article 21 of the European Convention on Human Rights as well as the need for gender balance. In March 2005, Resolution 1366 (2004) was amended by Resolution 1426 (2005) by which single-sex lists of candidates would be considered if the sex was under-represented (under 40 % of judges).

2. In its reply to Recommendation 1649 (2004), the Committee of Ministers indicated that "*circumstances may exceptionally arise in which, as a result of the correct application of the other five criteria [enumerated in paragraph 19 of the Recommendation], a Contracting Party may find itself obliged to submit a list containing candidates of only one sex in derogation from that rule... In this context, the Committee draws attention to the danger that such an obligation could under certain circumstances give rise to difficulties in satisfying the requirements of Article 21 of the Convention*" (Doc. 10506, emphasis added).

3. The Committee of Ministers therefore invited the Assembly "*to consider the possibility of modifying its own rules in order to allow exceptional derogation from the rule where the authorities of the Contracting Party concerned present convincing arguments to the Committee of Ministers and the Assembly to the effect that, in order to respect the requirements concerning the individual qualifications of candidates, it could not do otherwise than to submit a single-sex list*" (again, emphasis added).

4. In order to take this proposal into account, the Assembly should modify as follows paragraph 3.ii of Resolution 1366 (2004), as amended by Resolution 1426 (2005):

"The Assembly decides not to consider lists of candidates where:

(...)

ii. the list does 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 *or in exceptional circumstances duly so considered by the Ad hoc Sub-Committee and agreed by a two-thirds majority*".

Signed (see overleaf)

Signed ¹:

BEMELMANS-VIDEC, Marie-Louise, Netherlands, EPP/CD
ALEVRAS, Athanasios, Greece, SOC
BARTUMEU CASSANY, Jaume, Andorra, SOC
HEYNEMANN, Bernd, Germany, EPP/CD
HOLOVATY Serhiy, Ukraine, NR
HUNAUULT, Michel, France, EDG
IVANJI, Željko, Serbia, EPP/CD
MARTY, Dick, Switzerland, ALDE
SASI, Kimmo, Finland, EPP/CD
TOMASZEWSKA, Ewa, Poland, EDG

¹ SOC: Socialist Group
EPP/CD: Group of the European People's Party
ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democratic Group
UEL: Group of the Unified European Left
NR: not registered in a group