Parliamentary Assembly
Assemblée parlementaire

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

Doc. 11194
5 March 2007

Improving CPT selection procedures

Opinion[1]
Committee on Equal Opportunities for Women and Men
Rapporteur: Mrs Gisela WURM, Austria, Socialist Group

I. Conclusions of the Committee

The Committee on Equal Opportunities for Women and Men supports the draft resolution presented. It wishes, however, to present three essential amendments to preserve and promote equal access for women and men to the important function of member of the CPT at all three levels of the decision-making process: at the national level, at the level of the Sub-Committee on Human Rights, and at the level of the Bureau of the Assembly.

II. Proposed amendments to the draft resolution

Amendment A:

Add the following words at the end of sub-paragraph 6.1.1:

> "open equally to male and female candidates, with a preference for candidates of the under-represented sex on the CPT in the case of equal merit".

Amendment B:

Add the following sub-paragraph after sub-paragraph 6.2.3:

> **"**reject lists of candidates which do not include at least one man and one woman, except when all candidates on the list are of the sex underrepresented on the CPT (less than 40%);"

Amendment C:

Replace sub-paragraph 7.2. with the following sub-paragraph:

> "lists of candidates shall include at least one man and one woman, except when all candidates on the list are of the sex underrepresented on the CPT (less than 40%); a list that does not conform to this rule shall be rejected by the Bureau;"

[1] See Doc. 11182 tabled by the Committee on Legal Affairs and Human Rights.

III. Explanatory memorandum by the Rapporteur, Mrs Gisela Wurm

1. In its Resolution 1248 (2001), the Assembly found that the "current composition of the CPT is not balanced, either from the point of view of the representation of women, or from that of the different professional backgrounds required of its members". Unfortunately, six years later, the situation has not improved. The current CPT is composed of 30 men (71%), 12 women (29%), and lacks doctors (especially those with forensic qualifications) and members with experience of the law enforcement agencies.

2. As the Rapporteur of the Committee on Legal Affairs and Human Rights, Mr Cebeci, has correctly noted, "as far as the CPT is concerned, even in view of the fact that the overwhelming majority of prison inmates are men, a mixed composition of visiting delegations has practical advantages from a psychological point of view"[2]. Apart from this practical consideration, there is also the question of fairness: being elected a member of the CPT is an honour, which brings with it heavy responsibilities, but also public esteem. The position of CPT member should thus be open equally to women and men.

3. Again, as Mr Cebeci has pointed out, in most countries, the selection procedure at national level is "murky". It should thus come as no surprise that, already at that level, more male than female candidates are put forward. "Murky" selection procedures tend to benefit male candidates, due to the "old boys network". This is particularly true when the selecting authorities are also overwhelmingly male-dominated (as both national delegations to the Assembly and national governments tend to be).

4. During the January 2004 part-session, the Assembly decided that it would no longer consider lists of candidates for the European Court of Human Rights which did not include at least one candidate of each sex (this rule was changed in 2005 to allow for uni-sex candidate lists, provided they were from the underrepresented sex on the Court, i.e. women). It could be assumed that this rule would also, by analogy, be applied to the CPT candidate lists, even though the Assembly is not the electing body, but only makes recommendations to the Committee of Ministers via its Bureau.

5. From the January 2004 part-session until December 2006, the Bureau of the Assembly made 35 recommendations to the Committee of Ministers, based on 5 lists including no women (14%), 19 lists including one woman (54%), 8 lists including two women (23%), and 3 lists including three women (9%). During the January 2006 part-session, the Bureau decided to ask two parliamentary delegations having submitted lists with no women to submit a new list including both sexes, thus applying the above-mentioned rule by analogy (albeit with a two-year time-lag). In 16 cases (46%), the Bureau of the Assembly recommended electing a female candidate to the Committee of Ministers; in 12 cases (34%), the Committee of Ministers followed suit.

6. These numbers suggest that the biggest bias against women candidates is still at the national level. The Bureau of the Assembly is surprisingly gender-neutral in view of its composition (only 11% women), while the Committee of Ministers is more reluctant again to elect women. The national delegations presenting all-male candidate lists are not all small and/or southern countries, as one might assume. In fact, even the smallest states fielded women as candidates for the CPT. Neither were the three countries which presented all-female candidate lists all Nordic.

7. Some people have recently started arguing, in the case of candidates to the European Court of Human Rights, that some small countries are unable to field qualified women candidates. Quite apart from the fact that this argument is hardly credible, in the case of the CPT, it would be even more difficult to argue that a country has no woman candidates of "high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention"[3]. In fact, such an assertion could only be qualified as an insult to women.

8. The Rapporteur of the Committee on Legal Affairs and Human Rights thus argues differently: that in some cases, the Sub-Committee on Human Rights may "come to the conclusion, in light of

[2] Doc. 11182, paragraph 6 of the explanatory memorandum.

[3] Article 4 (2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment.

explanations provided by national delegations, that, following a transparent and fair national selection procedure, the three most qualified candidates have been included in the list".[4] In other words, the Committee on Legal Affairs and Human Rights is trying to play "quality" against "gender equality".

9. This argument is a very old one, and has been used in the past to try and avoid the introduction of "quotas" or other forms of gender-based positive discrimination. **What this argument does not take into account is that, like beauty, "quality" is in the eye of the beholder**. It has been proven by countless studies that selection panels tend to reproduce themselves, in particular as concerns their gender composition. In other words, regardless of the qualifications of candidates, male-dominated panels tend to select men.

10. A quick look at the gender composition of the selecting authorities at national level (governments, parliaments, and, lastly, the national parliamentary delegations to the Assembly) reveals that most of them, if not all, are clearly male-dominated. At the level of the Assembly, the Sub-Committee on Human Rights numbers 18 % women and 82 % men and the Bureau 11 % women and 89 % men. In other words, at every level of the selection procedure, the odds are stacked against female candidates – even before the Committee of Ministers (also male-dominated, I may add) casts the final vote.

11. **This is why it is necessary to continue to insist that each and every candidate list of three candidates to the CPT includes at least one woman**. Since January 2006, the Bureau has rejected all-male lists. With the current representation of women on the CPT at 29%, there is absolutely no reason to change that practice and allow all-male lists, which are, in fact, the result of discrimination against women at different levels of the selection procedure – even if this discrimination is sometimes unconscious. All-female lists, however, should be allowed until the "critical mass threshold" of 40% decided upon by both the Parliamentary Assembly and the Committee of Ministers in numerous texts has been reached for the underrepresented sex of women on the CPT.

12. The suggestion of the Committee on Legal Affairs and Human Rights to "preserve the flexibility that the Sub-Committee is currently enjoying, by allowing it to base its decision on the professional quality of the candidates, whilst continuing to recommend the appointment of women candidates where they are equally qualified"[5] should thus be roundly rejected – especially since the Assembly has already applied the same rule "de jure" to candidate lists for the European Court of Human Rights for more than three years already.

13. I would thus like to propose three essential amendments aimed at preserving and promoting equal access for women and men to the important function of member of the CPT at all three levels of the decision-making process. Amendment A suggests that at the national level, public calls for candidatures be open equally to male and female candidates, with a preference for candidates of the under-represented sex on the CPT in the case of equal merit. Amendment B seeks to bind the Sub-Committee on Human Rights to the rule that lists of candidates which do not include at least one man and one woman, except when all candidates on the list are of the sex underrepresented on the CPT (less than 40%) must be rejected. Amendment C seeks to bind the Bureau of the Assembly to the same rule.

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Reporting committee: Committee on Legal Affairs and Human Rights

Committee seized for opinion: Committee on Equal Opportunities for Women and Men

Reference to Committee: Doc 10471, reference N°3066 of 18 March 2005

Opinion adopted by the Committee on 26 February 2007.

Secretariat of the Committee: Ms Kleinsorge, Ms Affholder, Ms Devaux, Mr Diallo

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[4] Doc. 11182, paragraph 45 of the explanatory memorandum.

[5] Idem.