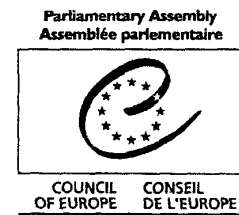


Parliamentary Assembly
Assemblée parlementaire



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

Doc. 10454
8 February 2005

Candidates for the European Court of Human Rights

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Kevin McNamara United Kingdom, Socialist Group

Summary

The Parliamentary Assembly has developed a procedure for examining candidatures for the European Court of Human Rights and has adopted specific criteria to this end. Noting the continued existence of a clear imbalance between the sexes in the membership of the Court, the Assembly, in Resolution 1366 (2004) on candidates for the European Court of Human Rights, rightly stressed the importance of restoring the balance. It decided, accordingly, “not to consider lists of candidates where the list does not include at least one candidate of each sex”.

However, to comply with this provision, the Assembly has no alternative but to reject any list where all three candidates are of the same sex, even if the candidates are of the under-represented sex in the Court. This effectively excludes any consideration of an all-female list of candidates.

A revision of Resolution 1366 (2004) is therefore necessary in order to introduce a specific rule regarding the under-represented sex in the Court, to ensure that the procedure set up by the Assembly itself is not contrary to its purpose of achieving a more balanced representation of both sexes in the Court.

I. Draft resolution

1. The Parliamentary Assembly has developed and adopted a procedure for examining candidatures for the European Court of Human Rights, laying down detailed criteria.
2. Noting the continued existence of a clear imbalance between the sexes in the membership of the Court, the Assembly, in Resolution 1366 (2004) and Recommendation 1649 (2004) on *candidates for the European Court of Human Rights*, stressed the importance of restoring the balance and decided accordingly "not to consider lists of candidates where (..) the list does not include at least one candidate of each sex".
3. The Assembly notes that women are clearly still under-represented in the Court today, as only 11 of the 43 judges currently in office are women.
4. The wording of paragraph 3.ii. of the Resolution quoted above effectively excludes any consideration of an all-female list of candidates, even if it would obviously contribute to furthering the Assembly's purpose of achieving a more balanced representation of both sexes in the Court.
5. Accordingly, the Assembly decides to introduce a special rule for considering candidatures for the European Court of Human Rights regarding the under-represented sex in the Court and to amend paragraph 3.ii. of Resolution 1366 (2004) as follows :

"3. 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."

II. Explanatory memorandum
by Mr McNamara, Rapporteur

A. Introduction

1. Paragraph 3.ii. of Resolution 1366, adopted by the Parliamentary Assembly on 30 January 2004, stipulates that *"The Assembly decides not to consider lists of candidates where (...) the list does not include at least one candidate of each sex"*. This naturally left the Assembly and, before it, its Ad Hoc Sub-Committee on the election of judges to the European Court of Human Rights, no alternative but to reject any list where all three candidates are of the same sex, even if the candidates are of the under-represented sex in the Court.

2. When considering this issue at its meeting on 16 December 2004, the Committee instructed its Chair to ask the Bureau that the procedure for considering single-sex lists of candidates - if the candidates were of the sex under-represented in the Court - be temporarily suspended pending a decision of the Assembly. On 10 January 2005 the Bureau decided to suspend consideration of such lists.

3. A revision of Resolution 1366 (2004) is therefore necessary, in order that the procedure set up by the Assembly itself is not contrary to its purpose of achieving a more balanced representation of both sexes in the Court. I therefore tabled a motion for a resolution aimed at introducing a specific rule regarding the under-represented sex in the Court. This approach should in no way be considered as an obligation for States Parties to the Convention to submit lists on which all the candidates are of the under-represented sex; it simply endeavours to remove an obstacle to the submission of such lists when necessary.

4. The motion¹ was referred to the Committee on Legal Affairs and Human Rights, which appointed me Rapporteur, and also, for opinion, to the Committee on Equal Opportunities for Women and Men.

B. Amending Resolution 1366 (2004) to introduce a special rule

5. In its Resolution 1366 (2004) and its Recommendation 1649 (2004)² on *Candidates for the European Court of Human Rights*, the Assembly rightly stressed the importance of gender balance in the composition of the Court.

6. These texts reaffirmed the long-standing position the Assembly had already taken in previous texts, in particular Directive 558 (1999)³, Recommendation 1429 (1999) and Directive 519 (1996)⁴.

7. Noting the continued existence of a clear imbalance between women and men in the European Court of Human Rights, and aware that this imbalance reflected the under-representation of women on the lists of candidates presented by the member states, the Assembly decided, in Resolution 1366 (2004), not to consider lists of candidates without at least one male and one female candidate:

"The Assembly decides not to consider lists of candidates where: (..) the list does not include at least one candidate of each sex;" (para. 3.ii.)

8. In Recommendation 1649 (2004) it also called upon the Committee of Ministers to address the issue of the gender imbalance by inviting the governments of the member states *"to ensure (...) that every list contains candidates of both sexes"* (para. 19.iii.).

¹ Doc 10377.

² See Doc 9963, report of the Committee on Legal Affairs and Human Rights, (rapporteur: Mr McNamara), and Doc 10048, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Cliveti.

³ *"The Assembly (...) instructs the Sub-Committee on the Election of Judges of its Committee on Legal Affairs and Human Rights, to make sure that in future elections to the Court member states apply the criteria which it has drawn up for the establishment of lists of candidates, and in particular the presence of candidates of both sexes."*

⁴ *"The Assembly (...) instructs its Committee on Legal Affairs and Human Rights to examine the question of the qualifications and manner of appointment of judges to the European Court of Human Rights, with a view to achieving a balanced representation of the sexes."*

9. The Assembly clearly took this decision after noticing that, unfortunately, certain high contracting parties to the Convention were submitting all-male lists of candidates. The Assembly refused, quite rightly, to examine these lists as they made it quite impossible to bring gender balance to the membership of the Court, where women are still clearly under-represented even now (11 of the 43 judges currently in office).

10. However, the wording of the Resolution quoted above effectively excludes any consideration of an all-female list of candidates (a list otherwise meeting the criteria set by the Assembly). Bound by its own decision, the Assembly would thus be obliged to reject such a list, even if it would obviously contribute to achieving the underlying purpose of the decision: to achieve a more balanced representation of both sexes in the Court.

11. It is therefore necessary to introduce a special rule regarding the under-represented sex in the Court.

12. The notion of under-representation may be defined here by applying the parity threshold fixed by the Committee of Ministers in Recommendation (2003) 3 *on balanced participation of women and men in political and public decision making*. 40 % is the parity threshold considered necessary to guarantee balanced representation and participation of women and men in decision-making bodies. In Resolution 1366 (2004), the Assembly itself decided to apply the same parity threshold when nominating its members to the *ad hoc* Sub-committee on the election of judges to the European Court of Human Rights.

13. The Assembly should therefore amend its decision as follows:

"3. 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."

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Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10377, Reference No 3039 of 24 January 2005

Draft resolution adopted unanimously by the Committee on 27 January 2005

Members of the Committee: Mr Serhiy **Holovaty** (*Chairperson*), Mr Jerzy **Jaskiernia**, Mr Erik Jurgens, Mr Eduard **Lintner** (*Vice-Chairpersons*), Mrs Birgitta **Ahlqvist**, Mr Athanasios Alevras, Mr Gulamhuseyn Alibeyli, Mr Alexander Arabadjiev (alternate: Mr Loutvi **Mestan**), Mr Miguel **Arias**, Mr Giorgi Arveladzé, Mr Abdülkadir **Ateş**, Mrs Maria Eduarda Azevedo, Mr Jaime **Bartumeu Cassany**, Mrs Meritxell **Batet**, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Sali Berisha, Mr Rudolf **Bindig**, Mr Malcolm Bruce, Mr Erol Aslan **Cebeci**, Mrs Pia Christmas-Møller, Mr Boriss **Cilevics**, Mr Viorel Coifan, Mr András Csáky, Mr Marcello Dell'Utri, Mr Mehdi **Eker**, Mr Martin **Engeset**, Mrs Lydie Err, Mr Václav **Exner**, Mr Valeriy Fedorov (alternate: Mr Akhmar **Zavgayev**), Mr Robert Fico, Mr György **Frunda**, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef Goris, Mr Valery **Grebennikov**, Mrs Gultakin Hajiyeva, Mrs Karin Hakl, Mr Rafis Haliti, Mr Michel **Hunault**, Mr Sergei **Ivanov**, Mr Tomš Jirsa (alternate: Mrs Alena **Gajdúšková**), Mr Neven Jurica, Mr Antti **Kaikkonen**, Mr Hans **Kaufmann**, Mr Ulrich Kelber, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Jean-Pierre Kucheida, Mrs Darja **Lavižar-Bebler**, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony **Lloyd**, Mr Andrea Manzella, Mr Alberto Martins, Mr Dich Marty, Mr Tito Masi, Mr Kevin **McNamara**, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolić, Mr Ionel Olteanu, Mrs Ann Ormonde, Mrs Agnieszka Pasternak, Mr Ivan Pavlov (alternate: Mr Latchezar **Toshev**), Mr Johan Pehrson, Mr Piero Pellicini, Mrs Sólveig Pétursdóttir, Mr Rino Piscitello, Mr Petro Poroshenko, Mrs Maria Postoica, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguz, Mr François Rochebloine (alternate: Mr Michel **Dreyfus-Schmidt**), Mr Armen **Rustamyan**, Mr Michael Spindelegger, Mr Petro Symonenko, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr John Wilkinson (alternate: Mr Syd **Rapson**), Mrs Renate **Wohlwend**, Mr Vladimir Zhirinovskiy, Mr Zoran Žižic

N.B. The names of those members who were present at the meeting are printed in bold.

Secretariat of the Committee: Mr Schokkenbroek, Mr Schirmer, Mrs Clamer, Mr Milner