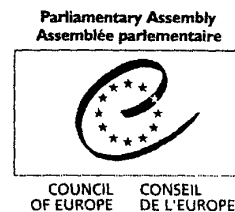


Parliamentary Assembly
Assemblée parlementaire



Doc. 10864
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Procedure for decisions by committees relating to candidates eligible for election by the Assembly

Report
Committee on Rules of Procedure and Immunities
Rapporteur: Mr John Greenway, United Kingdom, European Democrat Group

Summary

For lack of explicit provisions it has proven necessary to clarify the procedure for committee and sub-committee decisions relating to persons eligible for election by the Assembly, such as the ranking of candidates. The draft resolution contained in the report proposes to stipulate in Rule 46.2 that such decisions should be taken by secret ballot.

A. Draft resolution

1. The Assembly recalls that before it elects judges to the European Court of Human Rights and the Council of Europe Commissioner for Human Rights, its competent bodies interview the candidates for these posts.
2. Following these interviews, the candidates are ranked and sometimes, when there is no consensus, a vote may have to be taken. Recently problems have arisen concerning the procedure to be followed for such votes.
3. The Assembly notes that in the absence of explicit provisions, different interpretations are possible of the existing Rules with respect to the voting procedure for decisions related to such candidates.
4. The Assembly considers that, in order to clarify the situation, it would be preferable to specify in Rule 46 of the Rules of Procedure that for all decisions in committees relating to persons, voting shall take place by secret ballot. This should also apply to any votes in the Bureau concerning persons.
5. Therefore the Assembly decides:
 - 5.1. to insert in Rule 46.2. a new sentence after the second sentence worded as follows:

"For decisions relating to persons eligible for election by the Assembly, voting shall take place by secret ballot."
 - 5.2. that the new provision shall enter into force on the adoption of the present resolution.

B. Explanatory memorandum by Mr Greenway**I. Introduction**

1. On 3 October 2005 the Bureau asked the Chairman of the Committee on Rules of Procedure and Immunities to examine the procedure concerning secret ballots in committees for decisions relating to persons and to inform the Bureau accordingly. This request was the consequence of questions which had been raised in connection with the ranking of candidates for the post of Council of Europe Commissioner for Human Rights by an Assembly sub-committee.

2. The Chairman of the Committee on Rules of Procedure and Immunities, Mr Gross, prepared a Memorandum, which was first submitted to his committee which supported it. On 9 January 2006 he presented his memorandum to the Bureau of the Assembly and concluded that two interpretations were possible with respect to the voting procedure for ranking candidates. Furthermore, Mr Gross said that, in order to clarify the situation, his Committee was ready to elaborate a report should the Bureau wish so. This was agreed and the present report was prepared accordingly.

II. Provisions regarding voting in committees and sub-committees

3. Candidatures for various posts at the Council of Europe are regularly examined by the Bureau (e.g. members of the European Committee for the Prevention of Torture) and two sub-committees of the Committee of Legal Affairs and Human Rights (e.g. judges to the European Court of Human Rights, Commissioner for Human Rights). In general, these candidates are ranked. However, there is no explicit provision stating which procedure to be followed in case there is no consensus on the ranking and if a vote has to be taken.

4. With respect to Committee procedure, Rule 46.2. stipulates that voting in committee shall take place by a majority of the votes cast. A committee shall vote by show of hands. Except on procedural matters, a vote shall be by roll-call if so requested by at least two members.

5. There are no specific provisions concerning voting in sub-committees.

6. Some Assembly Committees elect rapporteurs by secret ballot if there is no consensus.

7. Rule 46.1 specifies that except as otherwise provided procedure in committee shall follow that in the Assembly. Concerning voting in the Assembly, Rule 39.10. provides that in the case of appointments, voting shall take place by secret ballot.

III. Lack of precedents

8. Before 1998 the Bureau of the Assembly has not only established the list of the candidates for membership of the European Committee for the Prevention of Torture, but also lists of candidates for the European Commission on Human Rights. Sometimes it has ranked them differently from the order in which the candidatures were presented by national delegations to the President of the Assembly.

9. The Committee of Ministers may, when proposing candidates for the posts of Secretary General and Deputy Secretary General of the Council of Europe, express a preference¹. This has happened in the past. A subsidiary body of the Committee of Ministers examines the candidatures for the post of judge at the European Court of Human Rights before the Committee forwards a list of three candidates to the Assembly.

10. At least for the last twenty years no cases could be found where the Bureau of the Assembly or the Committee of Ministers have voted when expressing a preference for candidates.

¹ The Bureau of the Assembly may also list the names of the candidates in order of preference should it so desire [see Regulations relating to the appointment of the Secretary General, the Deputy Secretary General of the Council of Europe and the Secretary General of the Assembly (paragraph 6)]

11. It may also be noted that the books "Procedure and practice" (dating from 1990) and "Committee procedure" (published in the 1950s) are silent on what to do in committee in connection to elections other than those of the chairperson, vice-chairpersons and rapporteurs, or more precisely, for expressing a preference on candidates.

IV. Evaluation

12. The Chairman of the Committee on Rules of Procedure and Immunities has rightly considered that two interpretations are possible of the existing Rules with respect to votes on ranking candidates.

13. On one hand, it could be argued that when the first Rules of Procedure of the Assembly were drafted, there were no other elections or examinations of candidatures at committee level than those of the committee chairperson and vice-chairpersons and possibly rapporteurs. In all these instances voting is to take place secret ballot. This would have as a consequence that the second sentence of Rule 46.2, "a committee shall vote by show of hands", could not be applied to decisions related to persons. However, Rule 46.1. would still be relevant, which states that procedure in committee shall follow that in the Assembly. With respect to appointments by the Assembly, Rule 39.10 is applicable. By interpreting this provision extensively, it should also cover votes expressing a preference for candidates. Thus, a secret ballot would have to take place in Committee. This would also apply to votes on ranking candidates in sub-committees. According to Rule 48.1, "except as otherwise provided in this rule, procedure in sub-committees shall follow that in committee".

14. On the other hand, one could argue that the expression of a preference for a candidate may not be assimilated to an election or an appointment. This would rule out the application of Rule 39.10. However, Rule 46.2 would be relevant at committee and (by means of Rule 48.1) sub-committee level and a vote by show of hands would be in order.

15. The Committee on Rules of Procedure and Immunities considers that it would not be appropriate to continue with this ambiguity. The Assembly should rather opt for a clear solution. In the Committee's view it would be preferable to vote by secret ballot in all decisions concerning persons in plenary and in committees. This should also apply to the Bureau of the Assembly. The Rules of Procedure of the Assembly should be amended accordingly.

16. Consequently, the Committee agreed to suggest inserting in Rule 46.2. a new sentence after the second sentence worded as follows:

"For decisions relating to persons eligible for election by the Assembly, voting shall take place by secret ballot."

17. It is also requested that the new provision should enter into force on the adoption of the preliminary draft resolution contained in this report.

V. Final remarks

18. There is currently a grey zone concerning the method of vote for taking decisions concerning persons in committee. The Committee on Rules of Procedure and Immunities unanimously agreed that this should henceforth be done by secret ballot only. Moreover, the Committee agreed to submit this report to the Standing Committee on 29 May 2006.

Reporting Committee: Committee on Rules of Procedure and Immunities

Reference to Committee: Doc. 10783, Ref. No 3167 of 23 January 2006

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

