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Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament

Report
Committee on Rules of Procedure, Immunities and Institutional Affairs
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Summary

The existence of an active and responsible parliamentary opposition or minority is indispensable in any pluralist democracy. By criticising the work of the government and presenting other policy options for consideration, the opposition works to ensure transparency and efficiency in the management of public affairs and thereby enhances the citizens' trust in public institutions.

Utilising three comparative studies and taking the diversity of the member states' parliamentary systems into account, the report provides procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament.

All parliaments grant rights to the opposition, but the opposition's status varies considerably between the member states. Moreover, certain parliaments are in the process of discussing opposition rights, including the elaboration of a status for the opposition.

The procedural guidelines presented in the report enable the opposition to monitor the government, participate in legislative work, and control the legality and constitutionality of parliamentary texts. However, opposition members should not only claim rights and means, purely and simply, but also show a willingness to use them and make their best efforts to enhance the efficiency of parliament as a whole.

National parliaments are invited to take inspiration from these guidelines when updating or reforming their rules of procedure. The member states are called on to bear the guidelines in mind when reflecting on the adaptation of their democratic institutions, particularly their parliaments, to the needs of a modern society.

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A. Draft resolution

1. “Democracy is founded on the right of everyone to take part in the management of public affairs; it therefore requires the existence of representative institutions at all levels and, in particular, a parliament in which all components of society are represented and which has the requisite powers and means to express the will of people by legislating and overseeing government action” (Universal Declaration on Democracy, Inter-Parliamentary Union, 1997). A politically representative parliament shall embody society in the diversity of its composition and shall work with due respect for the plurality of opinions.

2. The promotion and consolidation of pluralist democracy is one of the main objectives of the Council of Europe and its Parliamentary Assembly. The member states of the Organisation shall endeavour to develop common standards and practices aimed at promoting a free and pluralist parliamentary democracy and the means for their implementation in national parliaments. The democratic quality of a parliament is measured by the means available to the opposition or the parliamentary minority to accomplish its tasks.

3. A political opposition in and outside parliament is an essential component of a well-functioning democracy. One of the main functions of the opposition is to offer a reliable political alternative to the majority in power in providing other policy options for public consideration. By overseeing and criticising the work of the ruling government, continuously evaluating government action, and holding the government to account, the opposition works to ensure transparency of public decision and efficiency in the management of public affairs, thereby ensuring the defence of the public interest and preventing misuse and dysfunction.

4. The Parliamentary Assembly considers that an effective follow-up should be ensured at the national parliaments’ level to its Resolution 1547 (2007) on the state of human rights and democracy in Europe in particular when it recalls that the right to form a political opposition shall be considered as a key element of a genuine democracy. It then recalls its Resolution 1154 (1998) on the democratic functioning of national parliaments in which it calls on national parliaments, inter alia, to “give the opposition a status enabling it to play a responsible and constructive role (…)”.

5. Granting the parliamentary opposition a status according to which it is entitled to rights contributes to the effectiveness of a representative democracy and respect for political pluralism, and thereby to the citizens’ support for and confidence in well-functioning institutions. Establishing a fair legal and procedural framework and material conditions enabling the parliamentary minority to fulfil its functions is a prerequisite for the good functioning of representative democracy. Opposition members should be able to exercise their mandate in full and under at least the same conditions as those members of parliament who support the government; they shall participate in an active and effective manner in the activities of the parliament and shall enjoy the same rights. Equal treatment of members of parliament has to be ensured in all their activities and privileges.

6. The Assembly recalls that in Resolution 1547 (2007) it calls on opposition parties and their members not to ask for rights and means purely and simply, but also to show responsibility and willingness to use them and make their best efforts to enhance the efficiency of the parliament as a whole. They should not restrict themselves to only carrying out their perhaps insufficient role of criticism.

7. The Assembly welcomes the fact that procedural rights of the opposition are currently of political relevance in several national parliaments. It recalls in this context the conclusions reached during the last meeting of the Council of Europe Forum for the Future of Democracy held in Stockholm/Sigtuna from 13 to 15 June 2007 regarding the role and responsibilities of the opposition. It considers that an appropriate follow-up should be given to them at national parliaments’ level.

8. Differences exist in the degree of institutionalisation of the opposition in the parliaments of Council of Europe member states, ranging from informal recognition in the parliamentary Rules of Procedure when granting rights to the parliamentary minority to formal recognition of the opposition in the constitution of the state. However, beyond diversity of parliamentary systems in Europe, all parliaments of the member states grant rights to the parliamentary minority, whether organised around political groups or not. The Assembly notes that the notion of parliamentary opposition has undergone changes in conjunction to the modernisation of political debate. Several innovative good practices have been developed which merit the attention of a wider audience. Therefore the Assembly welcomes the current tendency in some parliaments to achieve full parity between the majority and the opposition concerning some rights, irrespective of their strengths in parliament.

9. Consequently, the Assembly invites the parliaments of the member states to reform or update their rules on the rights of the opposition or parliamentary minority and encourages them to draw up a charter on the rights of the opposition, or to define the status of the opposition in parliament, taking inspiration of the guidelines below.

10. While bearing in mind the variety of parliamentary democratic institutions in Europe, the Assembly encourages the member states of the Council of Europe to start as soon as possible a genuine and thorough reflection on the modernisation of their democratic institutions and the adaptation of their parliamentary institution to the needs of a modern society. To this end, member states should take into account the guidelines set below, as well as good practices established in the most innovative parliaments.

11. The Assembly also invites the European Commission for Democracy through Law (Venice Commission) to undertake a study on the role of opposition in a modern democratic society.

Guidelines on the rights and responsibilities of the opposition in a democratic parliament

12. Parliamentarians must exercise their mandate independently. They shall not be bound by any instruction or receive a binding mandate. One cannot blame a member of parliament to defend ideas that go against the government's official policy or that are not well received by a majority of the population.

13. National parliaments of the Council of Europe member states shall acknowledge the following rights in relation to the opposition or parliamentary minority:

13.1. freedom of expression and freedom of opinion; members of the opposition shall enjoy freedom of speech; they must be able to express their ideas freely;

13.2. the opposition shall participate in the supervision, scrutiny and control of the action and policy of the government:

13.2.1. opposition members have the right to information; opposition members and members of the majority are entitled to receive the same information from the government;

13.2.2. opposition members have the right to ask written and oral questions, and to receive replies to these questions;

13.2.3. opposition members shall be privileged during question time with the government (in particular they shall have the right to open question time and to ask more questions to the government than members of the majority);

13.2.4. opposition members have the right to interpellation (oral question with debate) and right to move a motion of no confidence;

13.2.5. opposition members have the right to request the convening of a plenary sitting of the parliament/chamber, which should be granted if a quorum of one quarter of members is reached;

13.2.6. opposition members have the right, at regular intervals, to set the agenda of plenary sittings, and to choose subjects for debate, including bills tabled by opposition members, control of government actions and evaluation of public policies and spending; matters selected on those days shall have precedence over government business;

13.2.7. opposition members have the right to ask for the holding of debates, including urgent or current affairs debates, which should be granted if a quorum of one quarter of members is reached;

13.2.8. opposition members have the right to request the setting-up of a committee of inquiry or a parliamentary mission of information and to become a member of it; this should be obtained if a quorum of one quarter of members is reached; a member of the opposition shall be appointed either chairperson or rapporteur of every committee of inquiry or mission of information successfully requested by opposition members or political group;

13.2.9. speaking time in plenary sittings shall be allotted at least according to the respective weight of political groups; allocation of an equal speaking time between majority and opposition, irrespective of their strength, should be privileged under certain circumstances;

13.3. the opposition shall participate in the organisation of legislative work:

13.3.1. opposition members have the right to participate in the management of parliamentary business; they shall have access to posts of vice-president and other positions of responsibility in parliament; the composition of governing bodies of parliament shall respect the principle of proportional representation and reflect the political composition of the parliament/chamber;

13.3.2. opposition members have the right to request the holding of an extraordinary session, which should be granted if a quorum of one quarter of members is reached;

13.4. the opposition shall participate in the legislative procedure:

13.4.1. opposition members have the right to table bills and motions on legislative matters;

13.4.2. opposition members have the right to speak and to vote in all debates;

13.4.3. opposition members have the right to table amendments;

13.4.4. opposition members have the right to present procedural motions (change in the proposed agenda or the adopted agenda, request to ascertain a quorum; request to refer a report back to a committee, etc.);

13.5. the opposition shall participate in parliamentary committees' work:

13.5.1. the presidency of standing/permanent committees shall be allocated among parliamentary groups on the basis of proportional representation; at least one permanent committee shall be chaired by a member of the opposition; the chairmanship of committees responsible for monitoring government action, such as the committee on budget and finance, the committee on audit, or the committee supervising security and intelligence services, should be granted to a member of the opposition;

13.5.2. any committee, permanent or not, shall be composed on the basis of proportional representation;

13.5.3. in committees, opposition members shall enjoy speaking and voting rights, the right to table amendments and to move a procedural motion; they shall have the possibility to append a dissenting opinion to a report adopted in committee or to present a minority report;

13.5.4. opposition members have the right to request the organisation of committee hearings; it should be granted if a quorum of one quarter of members is reached;

13.5.5. opposition members have the right to be appointed committee rapporteurs; in any case, rapporteurships in committees are allocated on the basis of proportional representation;

13.6. the opposition shall participate in political decision:

13.6.1. the opposition or parliamentary minority shall be consulted prior to any decision to dissolve parliament;

13.7. the opposition shall participate in the constitutional review of laws:

13.7.1. opposition members have the right to apply to the Constitutional Court or the appropriate legal body and to request a constitutional review of adopted laws;

13.7.2. opposition members have the right to request examination of constitutionality of draft laws or parliamentary acts by the Constitutional Court or the appropriate legal body prior to their adoption;

13.7.3. opposition members have the right to apply to the Court of Audit and to request its opinion on budgetary and finance matters.

14. National parliaments shall provide political groups or individual members of the opposition with the appropriate financial, material and technical resources and means so that they can properly perform their functions and duties. Opposition members shall have fair access to state funds and allowances; they shall have free and fair access to media, including public radio and TV channels, and sources of information.

15. The provisions of the rules of procedure concerning the rights of members of parliament and particularly of the minority should not be altered after each parliamentary election in order to adapt them to the election results.

16. The political opposition in parliament shall show political maturity and should exercise responsible and constructive opposition, by showing mutual respect, using its rights with a view to enhance the efficiency of parliament as a whole.

B. Explanatory memorandum, by Mr Karim Van Overmeire

1. Introduction

1. The promotion and consolidation of pluralist democracy is one of the main objectives of the Council of Europe's action. Political criticism and an organised political opposition are essential for democracy. One fundamental function of parliament consists of debate and the right to dissent in a civilised manner within the bounds of democratic ethos. Genuine political opposition is a necessary attribute of democracy; it indicates that the state has trust in the ability of its citizens to resolve differences by peaceful means.[1]

2. It was therefore rightly held that an "institution's" democratic nature can be gauged from the degree of leeway they allow the opposition, particularly in exercising scrutiny. The democratic quality of a parliament is measured by the means available to the opposition to accomplish its task.[2]The greatest common divisor in the so-called western democracies is the recognition of opposition; an opposition that has been explicitly integrated in the constitutional framework in the shape of a parliamentary opposition.[3]The opposition is a necessary element in a constitutional democracy, as it limits and controls the executive. But contrary to other powers, such as the judiciary, whose sole function, in a system of checks and balances, consists of limiting the powers of the executive, parliamentary opposition may also propose political alternatives to the majority in power.[4]

3. To enable a discussion between Parliamentary Assembly members and experts on the role of the opposition in a democratic parliament, the Committee on Rules of Procedure and Immunities organised a hearing on this subject on 10 December 2004 in Stockholm. This offered members an occasion to exchange their experience on the practice of parliamentary opposition. It is recalled that for the preparation of that seminar a questionnaire on rights and resources of the opposition in a democratic parliament was addressed to the national parliaments of the member states. Replies were analysed in Document AS/Pro(2004)32. One of the conclusions of the Stockholm hearing was that it might be useful to draw up some guidelines on the status of parliamentary opposition.

4. Parliamentary Assembly members prepared a motion for a resolution on this subject (Doc. 10488). Subsequently the Committee on Rules of Procedure and Immunities was instructed by the Bureau of the Assembly to elaborate procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament.

5. This report will recall the Assembly's activities concerning opposition issues. It will highlight new developments in national parliaments concerning the strengthening of opposition rights. Finally, it will present the main elements of the procedural rights and responsibilities of the opposition in a democratic parliament. In this connection the information gathered by means of comparative requests on opposition rights launched in the European Centre for Parliamentary Research and Documentation will be taken into account.

6. The rapporteur will also look for inspiration to related activities of the Inter-Parliamentary Union, IPU (Seminar in Libreville, Gabon, on Relations between Majority and Minority Parties in African Parliaments) and the Commonwealth Parliamentary Association, CPA (Workshop in Marlborough House, London, on the Rights and Responsibilities of the Opposition).

2. Council of Europe work concerning opposition questions

2.1. The relevance of the right to form an opposition and the European Convention on Human Rights

7. In his opinion on the report on the state of human rights and democracy (Doc. 11221 (2006), paragraphs 59 to 61), Mr Čekuolis has recalled that for the founding fathers of the Council of Europe the role of the opposition was of fundamental importance for a functioning democracy. A proposal was made to include in the European Convention on Human Rights (ECHR) a political clause worded as follows: "Every state party to the ECHR undertakes faithfully to respect the fundamental principles of political democracy and

1. Schmitz, G., *The opposition in a parliamentary system,* Political and Social Affairs Division, Canada, 1988.
2. Carcassonne, G., "Rights and resources necessary for the opposition to contribute to the organisation of parliamentary business and to the democratic functioning of a parliament", paper presented at the Seminar on the Role of the Opposition in a Democratic Parliament, Stockholm, 10 December 2004, p. 2.
3. Giulj, S., "Le statut de l'opposition en Europe", *Notes et études documentaires,* 24 September 1980, Paris, p. 11.
4. Ponthoreau, M.-C., "L'opposition comme garantie constitutionnelle", *RDP*, 2002, p. 1135.

in particular... to take no action which will interfere with the right of political criticism and the right to organise a political opposition". However, this proposal was only partly followed up in Article 3 of the first protocol to the ECHR.

2.2. The Council of Europe's contribution to the work of parliamentary opposition

2.2.1. European Court of Human Rights

8. The European Court of Human Rights has in many cases dealt with questions concerning parliamentary privilege (immunity), election and electoral laws, and other matters involving legal issues concerning parliament or parliamentarians (for example, *Demicoli v. Malta*, judgment of 27 September 2001, and *Marchiani v. France*, decision of 24 January 2006.

2.2.2. European Commission for Democracy through Law (Venice Commission)

9. Similarly, the European Commission for Democracy through Law of the Council of Europe has increased its activities on legal issues involving parliaments, including the rights of the opposition. In March 2007 it adopted a preliminary opinion on the Ukrainian draft law on the parliamentary opposition (Document CDL-AD(2007)015). The elaboration of a law on the opposition (for example, Portugal, Ukraine and Moldova) is quite exceptional. The Venice Commission made the following general remarks about parliamentary opposition:

– the opposition is an inherent component of any democratic political system and its undisturbed functioning is of vital importance;

– the legal status of the opposition is determined by the constitutional framework, the electoral system and historical, political, social and cultural factors;

– even if it is difficult to identify common European standards there is at least a general requirement to provide the parliamentary opposition with fair procedural means and guarantees;

– the introduction of an "Opposition Day", during which the opposition is entitled to set the agenda, enables the opposition to have an increased influence on parliamentary work.[5]

2.2.3. Forum for the Future of Democracy

10. From 13 to 15 June 2007, the Swedish authorities hosted a meeting in Stockholm/Sigtuna of the Council of Europe Forum for the Future of Democracy. The forum also addressed the subject of the role and responsibilities of the opposition (see conclusion by the general rapporteurs, MM. Gross, Whitmore and Tarschys, pp. 2-3) and noted in particular that:

– every country has a government; only democracies have an opposition;

– establishing a fair legal framework and material conditions enabling the opposition parties in parliament to have the means to fulfil their functions is a prerequisite for the good functioning of parliamentary democracy;

– the opposition should continuously evaluate government action as this contributes to the quality of political debate and thereby improves the government's capacity to manage public affairs;

– the lack of a strong opposition in parliament may lead to a form of extra-parliamentary opposition in which protests may be expressed in violent forms in the streets; one means of avoiding situations in which opposition is essentially extra-parliamentary is to lower the thresholds for parliamentary representation; in a developed democracy thresholds should be low, in order for the rights of all citizens and all political views and interests to be represented in parliament.

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5. On 1 and 2 June 2007, the Venice Commission adopted its final opinion on the draft law on the parliamentary opposition in Ukraine (CDL-AD(2007)019). The Venice Commission underlines, *inter alia*, that the new rights and "special status" created for the benefit of the opposition should not infringe upon the basic rights of those MPs and political factions which belong neither to the political majority nor to the political opposition. According to the Venice Commission, the draft law is not suitable for a country that uses proportional representation and should rather be construed with a view to enable independent MPs and factions to play a role in the political and institutional control of power. It may be noted in this regard that Article 3 of the draft law stipulates that the parliamentary opposition must, *inter alia*, submit an application on joining the opposition.

2.3. The Assembly and the rights of the opposition

11. The Assembly has in the past dealt with opposition issues on the occasion of debates on democratic institutions and also of its Strasbourg Conferences on Parliamentary Democracy. Furthermore, opposition questions play a role in the Assembly's practical work:

– national delegations to the Assembly must adequately reflect the strength of opposition parties in national parliaments; the credentials of delegations without members of the opposition or inadequate opposition representation have in the past been challenged systematically;

– the existence of an efficient and solid opposition in national parliaments is checked, when appropriate, in Assembly reports on monitoring of obligations and commitments by member states (for example, report on the Assembly's monitoring procedures, Doc. 11214 (2007), paragraph 104; see also the examples given in Mr Čekuolis' opinion (paragraph 66 of Doc. 11221)).

12. However, the Assembly has not debated specific reports on the opposition, its rights and obligations.

13. More recently, in addition to the Stockholm 2004 hearing on the role of the opposition in a democratic parliament, this matter has been raised in the Assembly's debate on the state of human rights and democracy in Europe. The opinion by Mr Čekuolis for the debate (see paragraph 7) contains a section on the opposition. The report by Mr Gross on the state of democracy in Europe (Doc. 11203) underlines (see paragraph 104) that the rights of the opposition in and outside parliament constitute another indication of a healthy democracy. However, in some Council of Europe member states opposition barely exists as is the case in Azerbaijan and Armenia. In other member states the role opposition can play in terms of democratic accountability of the majority is not understood. Merely boycotting parliamentary debates (for example, in Albania) will not further democracy, on the contrary. The report on the progress of the Assembly's monitoring procedure (Doc. 11214) includes reference to the situation of the opposition in several Council of Europe member states (for example, paragraphs 5, 66, 95, 106, 110, 116 and 207).

3. Developments at the level of national parliaments

14. The extension of the rights of the opposition plays a role in at least four national parliaments: Austria, France, Germany and Ukraine (see paragraph 9 above). It is to be noted that the research services of the Austrian and German parliaments have in April 2007 launched requests for comparative information to other national parliaments in the framework of the European Centre for Parliamentary Research and Documentation.[6]It is recalled that in 2005 the Italian Chamber of Deputies asked for information on a similar subject.[7]

3.1. Austria

15. The Constitutional Committee of the Austrian National Council adopted, on 24 May 2007, major changes to the electoral law and agreed on a prolongation of the legislative from four to five years.

16. This prolongation has given rise to proposals to widen parliamentary minority rights. These proposals, including the setting-up of committees of inquiries as a minority right, reforms of the right to ask questions, public meetings of committees, consideration of governmental reports and speaking time in plenary, are presently discussed in a Committee on Rules of Procedure of the National Council.

3.2. France

17. Several initiatives were launched in France in 2006 and 2007 to strengthen the rights of the opposition. In connection with the decision of President Sarkozy to modernise the institutions of the 5th Republic before the French local elections of March 2008, a Committee of Wise Persons was set up to elaborate, by 1 November 2007, proposals for a reform.

18. The wise persons were asked in particular to make proposals relating to the powers of the president of the republic, the verification of the president's budget, but also for a clearly defined status of the opposition in parliament. It would appear that many French members of parliament agree with the need to give parliament

6. Request No. 757 on parliamentary minority rights (Austria) and Request No. 760 on rights of oppositional political groups in parliament (Germany).
7. Request No. 421 on the status of parliamentary opposition (Italy, Camera dei Deputati).

the means to play efficiently its role of *contre-pouvoir* vis-à-vis the prerogatives of the president of the republic (*Le Monde*, 5-6 August 2007). This is also seen as a long expected and necessary modernisation of political debate (see article by Bernard Rullier in *Le Monde* of 21 June 2007).

19. On 19 October 2007 the so-called Balladur Committee presented to the French President, Nicolas Sarkozy, its report entitled "Une V^{e} République plus démocratique".[8]The report contains 77 proposals, 43 of which are aimed at strengthening the parliament. Concerning the opposition, the committee proposes a "flexible system" according to which parliamentary groups may declare their membership of the majority, or may abstain from doing so (p. 65, proposal 60). Concerning rights of the opposition, the committee proposes, *inter alia*:

– the elaboration of a charter on the rights of the opposition (proposal 61);

– a possibility for the opposition, at regular intervals, to set the agenda of plenary sittings dealing with bills, and control of government actions and evaluation of public policies respectively (proposals 21 and 22);

– identical allocation of speaking time between majority and opposition during question times with the government (proposal 44);

– the right for every parliamentary group to demand the creation of one committee of inquiry per year (proposal 58);

– a practice according to which a member of the opposition is appointed either rapporteur or chairperson in every committee of inquiry (proposal 57);

– proportional division among parliamentary groups as regards the post of chairperson in committees (proposal 35);

– an element of proportional representation for the election of members of the Assemblée nationale (23 seats) so as to assure the representation of minority political formations (proposal 62).

20. Prior to this initiative, the then president of the French National Assembly had made proposals in January 2006 for the reform of parliament including the rights of the opposition (*Le Monde* of 18 January 2006). By May 2006 the relevant committee of the French National Assembly had approved six of the president's eleven proposals. The report marks a first step towards a statute of the opposition. A proposition for a resolution concerning, *inter alia*, the opposition was adopted on 7 June 2006 by the relevant committee. According to the proposition, each political group would, at the beginning of a legislature, have to decide whether it belongs to the majority or the opposition (Article 1). The opposition would be granted new rights, including the post of chairperson of one of the six permanent committees (Article 2), the function of chairperson or rapporteur within investigating committees and missions of information (Articles 7 and 8), and the right to have presented to them reports on the application of laws. However, the French Constitutional Council declared on 22 June 2006 that the proposition was contrary to the constitution as it would install an "unjustified difference" in the treatment of the various political groups.[9]

21. The French Prime Minister, François Fillon, stated in his keynote speech on 3 July 2007 that the decision to grant the presidency of the finance committee to a member of the opposition was a considerable advancement. Mr Fillon emphasised that he believed in the synergy of differences and intelligences and that the opposition was therefore not to be seen as an adversary but rather as a necessary opponent.

3.3. Germany

22. Between December 2005 and January 2007 the three political groups in the German Bundestag forming the opposition have tabled motions on strengthening the opposition/minority rights in the Bundestag and on lively democracy during the great coalition. On 10 May 2007 the Committee on Rules of Procedure of

8. The report is available at the website of the Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la Ve République, http://www.comite-constitutionnel.fr/.

9. The Constitutional Council stated the following: "Considérant qu'en requérant des groupes une déclaration d'appartenance à la majorité ou à l'opposition et en conférant, en cas de contestation, un pouvoir de décision au Bureau de l'Assemblée nationale, les modalités retenues par la résolution … ont pour effet d'instaurer entre les groupes une différence de traitement injustifiée" (Constitutional Council Decision No. 2006-537 DC, 22 June 2006).

the Bundestag held a hearing on this matter with seven experts which all had prepared written evidence (Minutes G 17 and committee Documents 16 G 13/1 to 13/7). They dealt in particular with opposition in relation to:

– requesting a constitutional review of a law;

– setting up committees of inquiry;

– asking for the organisation of committee hearings;

– requesting a special sitting of the Bundestag;

– asking for the organisation of a current affairs debate.

23. It is interesting to note that during the current German legislature one of the three opposition groups (Bündnis 90/Grünen) has initiated one third of the Bundestag's current affairs debates and tabled half of the *Große Anfragen* to the federal government. Another opposition group (Die Linke) has asked half of all *Kleine Anfragen* to the government. The Committee on Rules of Procedure of the German Bundestag has not yet prepared a report.

24. The President of the Bundestag, Norbert Lammert, has spoken on several occasions on the rights of the opposition in Germany. According to the president, the majority and the opposition should, in principle, have the same rights and obligations (Bundestag sitting, 18 October 2005). The president points out that two political groups should suffice in order to request the convening of a plenary session of the Bundestag, as well as the constitutional review of a law adopted by the Bundestag and the Bundesrat (Deutschlandfunk, 7 October 2007, and Spiegel online, 26 September 2007). The president also stresses that speaking time in plenary should continue to be allotted in relation to the weight of the respective political groups, and not be divided equally between the majority and the opposition (Deutschlandfunk, 17 September 2006).

3.4. Ukraine

25. A draft law on the parliamentary opposition in Ukraine was adopted in a first reading by the Ukrainian Parliament on 12 January 2007 (see paragraph 9). The draft law has been examined and commented upon by the European Commission for Democracy through Law (Venice Commission). The draft law will be on the agenda of the new Verkhovna Rada elected on 30 September 2007.

4. Summary of CPA and IPU activities on the rights of the opposition

26. The Commonwealth Parliamentary Association (CPA) held a seminar in June 1998 on the role of the opposition. In addition to stressing the importance of a widespread agreement between the government and the wider society on the democratic "rules of the game", the participants underlined, *inter alia*, that the opposition should:

– present itself, unless coalition government is the norm, as an "alternative government" and thereby be able to gain the confidence of the people;

– have access to funds, the media and sources of information so that it can properly perform its function;

– be able to influence government policy at an early stage of the legislative process by means of "behind the scenes" contact with government and discussion in committee;

– maintain contacts outside of parliament and thus be able to better understand the needs of the people.

27. The Inter-Parliamentary Union (IPU) held a Seminar in Libreville, Gabon, in May 1999 on the Relations between Majority and Minority Parties in African Parliaments. It was stated that by overseeing and criticising the work of the government, the opposition works to ensure transparency, integrity and efficiency in the conduct of public affairs and thus contributes to ensuring the defence of the public interest, including human rights and fundamental freedoms. The seminar concluded with non-fixed guidelines on the rights and responsibilities of the opposition. It was emphasised, *inter alia*, that members of the opposition should be protected from any measure that would infringe upon their personal integrity or harm their property, have fair access to state media, state funds and sources of information, and be entitled to proportional representation in committees. The importance of an impartial speaker was underlined. All members should be equally entitled to put questions to the government and receive answers to these. As regards responsibilities, it was stressed that the opposition should engage in responsible and constructive opposition and thereby offer a credible alternative to the majority in power.

5. Scope of the procedural guidelines to be prepared

28. It should first of all be recalled that this document will only cover the parliamentary opposition in a democratic system, as the guidelines are to be addressed to the parliaments of Council of Europe member states, that is, countries cherishing values and visions of democratic governance, human rights, rule of law and peace. However, it is not easy to elaborate guidelines that could be useful for the various European democracies, as the status of the opposition in a given national parliament will vary enormously from country to country, depending on, *inter alia*, the constitutional framework and the electoral system alongside a host of other political, social and cultural factors. From the answers to the questionnaire of the Italian Chamber of Deputies (paragraph 14 above), one can notice the differences in the degree of institutionalisation of the opposition in the various parliaments of the member states, ranging from informal recognition in the rules of procedure of the parliament to formal recognition in the constitution of the member state.

29. The guidelines will only deal with the opposition inside the representative institution (parliament), as opposed to extra-parliamentary opposition, which has – and this has to be underlined – become more and more important, in particular when major decisions in a country take place outside of the parliamentary channels.[10]In those circumstances, it is increasingly difficult for the parliamentary opposition to scrutinise and influence government action. Increased resort to extra-parliamentary means to resolve the country's problems leads inevitably to a greater prominence for extra-parliamentary forms of opposition. Needless to say, the decline of parliamentary opposition reflects the decline of parliament in general.

30. No distinction will be made between monocameral and bicameral parliamentary systems, although an analogy could be drawn between the watchdog functions performed by the upper house and by the members of the opposition. Just as its members are expected to use the upper house as a chamber of "sober second thought" as well as guarantor of minority rights and sectional interests, members of the opposition in the lower house are called upon to act as a brake on government haste. Furthermore, they should ensure that all legislation receives "due process" of parliamentary deliberation, and that diverse and opposing points of view have a chance to be aired and defended.[11]

31. By its very presence in the parliament, the aforementioned opposition recognises the legitimacy of the democratic system. The opposition accepts that there is a given authority, often the national government, which they oppose, but the existence of which they do not question.[12]

32. The parliamentary opposition should be given fair procedural means to fulfil its important responsibilities in a democracy: to articulate the interests of their constituents, to scrutinise the actions of the government and to put forward political alternatives to government policies. The genius of parliamentary process is that adversary politics are not simply negative; they can in themselves play an important role in the shaping of government policy. Indeed, without good opposition, policy consensus would be a meaningless formality. The best guarantee of good government is still the vigilance of an effective parliamentary opposition. As the Supreme Court of Canada stated: "a functioning democracy requires a continuous process of discussion. The constitution mandates government by democratic legislatures, and an executive accountable to them, resting ultimately on public opinion reached by discussion and the interplay of ideas. … By its very nature, the need to build majorities necessitates compromise, negotiation, and deliberation. No one has a monopoly on truth, and our system is predicated on the faith that in the marketplace of ideas, the best solutions to public problems will rise to the top. Inevitably, there will be dissenting voices. A democratic system of government is committed to considering those dissenting voices and seeking to acknowledge and address those voices in the laws by which all in the community must live".[13]

6. Different types of parliamentary opposition

33. Trying to give an exact definition of parliamentary opposition is not an easy task. There are a lot of different sorts and forms of opposition depending on the nature and the functioning of the political system. Furthermore, the notion of opposition has evolved in the past and continues to do so. In the constitutional monarchies there was an antagonism between parliament and government. Today, tension exists between the government and its supporting groups on one side and the opposition on the other.

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10. Schmitz, G., op. cit.
11. *Idem*.
12. Neunreither, K., *Governance without opposition: the case of the European Union*, Government and Opposition, United Kingdom, 1998, p. 424.
13. Supreme Court of Canada, Reference Quebec (1998) 2 RCS, 217, paragraph 68.

6.1. "Westminster model"

34. In systems based on majority rule, the opposition consists of minority parties (political groups) in parliament; the largest opposition party forms his/her Majesty's Official Opposition and is ready to succeed the government when it has resigned. This is the so-called "Westminster model" of parliamentary democracy. In a majority system, which often is bipolar, the two main political parties alternate as government and opposition. In this context, the opposition forms a recognised, even semi-official "government-in-waiting", a "shadow government". Parliament is a forum in which members can not only criticise the actions and proposals of the government, but also debate on proposals that might be adopted, either by the present government, or in the near or far future.[14]The opposition must be able to propose, under public scrutiny, an alternative to government projects, and hence to be an alternative to the government.

6.2. Proportional representation model

35. In a proportional representation system, the parliamentary opposition consists of those political parties or groups and individuals who are not part of the governmental majority and who have publicly declared that they will not support the government. The more proportional a representative system, the greater the likelihood of multiple political parties appearing on the parliamentary scene. This can result in multiple opposition parties which may have little in common and a minimal desire to form a united bloc opposed to the government. It may also happen that the largest political group in a parliament is in the opposition.

6.3. Case of minority governments

36. A particular situation of parliamentary opposition should be mentioned: opposition in countries with minority governments. Such governments are often supported in parliament by one or more political groups which, formally speaking, belong to the opposition. Their success depends on the loyal respect of the agreements made by all those concerned. Such agreements are most interesting for smaller political groups. They are then exercising political power and are at the same time not obliged to accept everything from the government. It is recalled that the problem of minority governments and of extra-parliamentary opposition had already been discussed in connection with opposition rights during a European Parliament symposium in Luxemburg in June 1975. Professor Manzella, Vice-Chairperson of the Committee on Rules of Procedure and Immunities, participated in the symposium as an expert of the Italian Parliament.

6.4. Special case of Switzerland

37. Switzerland is a so-called *Konkordanz-demokratie*. The major political parties are represented in the federal government. Therefore, no government majority and opposition exist as in other European states. It is to be noted that according to a recent article of the *Neue Zürcher Zeitung* (of 5 October 2007), the notion of *Konkordanz-demokratie* is undergoing some adaptations.[15]

6.5. Types of opposition approaches

38. The rights of the opposition correspond sometimes to a logic of conflict, and sometimes to a logic of co-operation, of influencing the policy-making process. Both approaches are fruitful. These instruments may be used differently, depending on whether government or parliament controls the parliamentary agenda (government managed versus parliament-centred).

39. In all cases, the opposition is a parliamentary medium for limiting and controlling governmental power. However, opposition is not only a mechanism, a political process, but is made up of rights of individual parliamentarians to formulate and voice their views. This is particularly important when they declare that they are in disagreement with governmental policies. Within a democratic parliament where all members are equal, no one and no political group can claim a monopoly on truth or a special mandate to articulate the alleged will of people.

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14. Jennings, I., *Parliamentary reform*, Gollancz, London, 1934, p. 29, quoted by Tomkins, A., "'Talking in fictions': Jennings on parliament", MLR, 2004, 783. The Council of Europe member states have abandoned the ideas of Rousseau, according to whom "la minorité se trompe sur la volonté générale et elle doit se rallier à la majorité qui n'est pas un expédient de l'unanimité, mais un substitut de l'unanimité car, dans le pacte social, chacun a accepté de se soumettre à la volonté générale. Cette recherche de volonté générale laisse donc en marge les droits de la minorité et la fonction d'opposition"; Ponthoreau, M.-C., "L'opposition comme garantie constitutionnelle", *RDP*, 2002, p. 1129.
15. See also *Le Monde* of 24 October 2007, "La droite … bouscule le modèle suisse".

7. Elements for guidelines for procedural rights and responsibilities of parliamentary opposition

7.1. General

40. The existence of an effective and responsible opposition is vital for the success of parliamentary democracy. A balance has to be struck between, on the one hand, the legitimate will of the majority to go forward and to bring about the programme on the basis of which they were elected, and, on the other hand, the possibility for the opposition to express its views on the bills tabled by the government – and also on other governmental actions – in a way that allows them to influence the texts that are to be adopted.

41. Moreover, it has to be borne in mind that an opposition with adequate procedural instruments and bearing responsibilities would be less inclined to make use of traditional means of blocking parliamentary work such as tabling thousands of amendments (*Le Monde* of 21 June 2007, article by Bernard Rullier).

42. Parliamentary privileges and immunities, generally defined and established by national constitutions and laws, are important. Equally important is the financing of political activities (financing of electoral campaigns, financing of political parties, etc.). A decent monthly allowance for a parliamentary mandate is one of the essential elements of the democratisation of the parliamentary systems, as it allows every citizen – whatever his/her personal fortune may be – to run for and to hold a political mandate while enjoying an adequate standard of living. The allowance can also partially be seen as a compensation for the risk the member of parliament takes by putting his/her professional career between "brackets" during the period of the parliamentary mandate. All members also need allowances for secretarial and research staff, as well as the reimbursement of expenses (travel, lodgings, telephone, etc.). However, these matters are usually not covered by the rules of procedure or complementary texts to the rules of a parliament. As they apply to both majority and opposition, they should not be included in the guidelines for procedural rights and responsibilities of the parliamentary opposition.

43. The principle of legitimate political opposition is one of the most fundamental components of any liberal democracy. Freedom of speech and the right publicly and legitimately to oppose the policies and actions of the government of the day are as essential to the overall concept of liberal democracy as the existence of free and fair elections. Democracy is an ideology of opposition as much as it is one of government.[16]

44. The procedural rights and responsibilities of the parliamentary opposition are important. In a majority government situation the opposition political groups in a parliament will normally not be able to outvote the government on any policy proposal. These groups have therefore to develop other instruments and use subtler techniques in their attempt to influence the government's policy but also to remain visible as an alternative to the existing government. The possibilities for action of the opposition and, in particular, the political groups in parliaments are determined primarily by rules of procedure and practice. They should be fairly applied while taking into account minority protection, but also the need for an appropriate functioning of parliament.

45. It should also be highlighted that the president of a parliament is the first guarantor of the rights of the opposition. In order to ensure equality of treatment between members of the governing majority and opposition parties, the president must be impartial in exercising his or her functions. In some chambers (for example, Finland) it is a tradition that during question time the president favours the opposition party members, who, in comparison to the majority, get to pose more questions to the ministers. In a speech made before his re-election as Speaker of the House of Commons (United Kingdom), Michael Martin stated that "I have said previously, and I say today, that a Speaker has a clear duty to every section of the House, especially to back-benchers. It is the Speaker's duty to serve the House, not the executive … Re-elected members will know that I think that it is right and fitting that a cabinet minister, and any minister, who has some new statement to make, should make that statement here, on the Floor of the House. Her Majesty's official opposition have built-in rights and privileges that the House has rightly given them. I say to those from minority parties represented here today, however, that their voices must be heard [Interruption]. The Speaker-elect can hear them" (Her Majesty's opposition, Standard Note: SN/PC/3910, last updated: 8 February 2006).

16. Helms, L., *Five ways of institutionalizing political opposition: lessons from the advanced democracies*, Government and Opposition, 2004, p. 22.

Status of the opposition

46. More that 30 chambers have replied to the Austrian and Italian questionnaires distributed to the members of the European Centre for Parliamentary Research and Documentation, ECPRD (Requests No. 757 and No. 421 respectively). The replies show that only three members (Portugal, Turkey and Croatia) recognise explicitly in their constitution the status of the opposition.[17]In Portugal there is a law of May 1998 on the status of the opposition. In Ukraine a law on the opposition is under preparation. The Balladur Committee (see above paragraph 19) proposes in its report the elaboration of a charter on the rights of the opposition in the French Parliament. The parliaments of Belgium (House of Representatives), Croatia, Georgia, Lithuania and Portugal deal with the opposition in their rules of procedure. According to Rule 40 of the Lithuanian Parliament's (the Seimas) Rules of Procedure, parliamentary groups whose total number of members makes up more than half of the parliament's members and who have signed a coalition agreement or declaration shall be considered as constituting the majority – other groups shall be considered as constituting the minority. The elder of the opposition group, or the head of a coalition holding more than 50% of those members which belong to the minority, shall be named leader of the Seimas' opposition, and obtain a salary.

47. In the Georgian Parliament, if a majority exists, an opposition may be established, receive the status of minority and be registered by the bureau of the parliament. In 2005, however, no minority was formed although an opposition group exists. In Portugal the powers of members of parliament and of parliamentary groups are mentioned in the constitution. In the House of Commons (United Kingdom), the largest minority party, which is prepared in the event of the resignation of the government to assume office, is called the "Official Opposition". Its importance has long received practical recognition in the procedure of the United Kingdom Parliament. In 1937, the leader of the opposition was granted a salary. It has to be underlined that in practically all parliaments (chambers) where there is no formal recognition of the opposition as such, provisions exist concerning minority rights.

7.2. Principle of equality

48. Equal treatment of members of parliament,[18]both as individual members and as members of a political group, has to be ensured in every aspect of the exercise of their mandate and of the operations of parliament. Opposition members should be able to exercise their mandate under the same conditions as those members of parliament who support the government. This applies both to the political activities (speaking time, access to committees, right to amend, right to table bills, control of the executive) and to the material, administrative and financial privileges (office space, parliamentary assistance, allowances, etc.).[19]With reference to the equality principle, the Court of First Instance of the European Communities held that "the conditions under which members who have been democratically vested with a parliamentary mandate exercise that mandate cannot be affected by their not belonging to a political group to an extent which exceeds what is necessary for the attainment of the legitimate objectives pursued by the parliament through its organisation in political groups".[20]

49. The rights of the members of parliament should be clearly established in the rules of procedure (or in complementary texts). Strictly speaking members of the opposition should have at least the same rights as members supporting the government. The provisions should not be altered after every legislative election in order to adapt them to the election results, which could result in the exclusion of a particular political group (for example, in the steering bodies of parliament). With a view to maintain continuity and stability in the system it would therefore be appropriate to prepare rules which would guarantee minority rights regardless of what the election results may show and which coalitions among political parties/groups may be formed.

50. Each individual member of parliament has to be able to determine autonomously how he intends to hold his office[21]and to represent his constituents. Elected representatives of parliament must exercise their mandate independently and cannot be bound by any instruction or receive a binding mandate. No one may impose on an individual member of parliament a specific conception of society. On the contrary, the juxtaposition of members of parliament aims at the representation within a parliamentary assembly of different

17. In the Lithuanian Parliament the minority is also explicitly referred to (see Rules 40 and 41 of the Rules of Procedure).
18. European Court of First Instance (CFI), judgment of 2 October 2001, *Martinez and De Gaulle v. European Parliament,* case T-222/99, T-327/99 and T-329/99, paragraphs 150-157.
19. The rights, benefits and advantages of a political group may increase in step with the number of MPs that become members of the group concerned, applying the proportionality principle. Moreover, members of political groups may to a certain extent be treated differently from non-attached members, although those differences of treatment are only acceptable in so far as they are necessary and objectively justified for the effective operation of parliament.
20. *Martinez and De Gaulle v. European Parliament,* op. cit., paragraph 202.
21. Ibid., paragraphs 91 and 109.

visions of society.[22]A member of parliament cannot be obliged to be politically neutral. One cannot blame a member for defending ideas that go against the government's official policy or that are not well received by a majority of the population.[23]According to the European Court of Human Rights, "it is of the essence of democracy to allow diverse political projects to be proposed and debated, even those that call into question the way a state is currently organised and those which offend, shock or disturb a section of the population …. A person or an association may promote a change in the law or even the legal and constitutional structures of the state on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles".[24]The European Court of Human Rights also ruled that an individual member of parliament cannot be excluded from parliament solely on the basis of the political party whereto he belongs, even if that party is prohibited: only individual acts of the member of parliament concerned justify such a decision.[25]

51. Each member of parliament is entitled to participate in an effective and active manner in the activities of the legislative assembly whereto he belongs. Irrespective of whether he is a member of the majority or of the opposition, he should be able to exercise his parliamentary mandate in full. This principle, combined with the principle of deliberation, requires a right to initiative,[26]the right of amendment,[27]as well as the right to speak[28]and to ask questions to members of the executive[29]or to control the executive in other ways. Although these rights can be regulated (bills, amendments or questions have to be in order, speaking time can be limited, there can be deadlines for tabling amendments), such restrictions are admissible only in so far that they are necessary in order to strike a balance between the effectiveness of the assemblies' operations and the possibility for a member of parliament to defend the interests of his constituents.

7.3. Constitution of political groups as formal basis for parliamentary opposition

52. However important individual action of a member may be, it is not sufficient to "threaten" a government in power. Therefore political parties must exist and more in particular political groups have to be created in parliament in order to be able to take over responsibilities once a government and its supporting parliamentary majority have lost the confidence of the people. Political groups make it possible for members of parliament to work more efficiently.

53. Generally speaking, for the opposition to become institutionalised, one should make use of the – politically neutral – notion of "parliamentary group", which is far from being standardised from one parliament to another. Hence the great diversification as far as the legal status of the opposition is concerned.[30]

54. The parliamentary rules should specify how individual members may form parliamentary groups and under which conditions they should be recognised by the steering bodies of parliament. For smaller political parties, it may be very difficult to get organised and to become recognised as a political group within the parliament. It is therefore important that the conditions to form a political group should not be too rigid. They should certainly not be either changed or tightened after an election with the intention of prohibiting new forces, which applied to the existing conditions, to form a parliamentary group. In this context, it should also be mentioned that some countries already include a minimum vote threshold (5% for instance) in the electoral legislation in order to avoid representatives from smaller political groups having representatives in parliament.

55. According to the Austrian survey launched in the framework of the ECPRD, 22 chambers require 5% or less of the members to form a group and three between 5.1% and 12%. As a maximum, 20 members are required in these chambers. It has occurred in some countries that major political parties have lost large parts of their electorate. In the end they could no longer even form a political group in parliament. In some instances solutions were found to allow the members concerned to form a kind of co-ordination group with fewer rights

22. ECHR, judgment of 18 February 1999, *Buscarini and Others v. San Marino*, paragraph 39; and judgment of 8 June 1999, *McGuinness v. United Kingdom*, paragraph 2 (inadmissible).
23. ECHR, judgment of 17 June 2004, *Zdanoka v. Latvia*, paragraph 85 (holding that a person's ineligibility because he was a member of the Communist Party violates Article 11 of the European Convention on Human Rights and Article 3 of the first protocol to that Convention).
24. Ibid., paragraph 98.
25. ECHR, judgment of 11 June 2002, *Selm Sadak v. Turkey*.
26. Rule 23 of the Rules of Procedure of the Parliamentary Assembly.
27. Ibid., Rule 34.
28. Ibid., Rule 35.
29. Ibid., Rule 58.
30. Giulj, S., op. cit.

than political groups in parliament. Different solutions were found in national parliaments for the rights of non-attached members. In the French National Assembly there is a meeting of non-attached members. Its proposals are taken into account, for example, in conjunction with the distribution of question time.

7.4. Political control by the opposition of the government; opposition participation in legislative work

56. The major functions of the members of parliament – from both majority and opposition parties – are the control of the government's activity, including budget control, participation in legislative work and the role for the control of the legality and constitutionality of parliamentary texts. It is from this point of view that the main rights of the opposition will be analysed.[31]Notably, the Balladur Committee (see paragraph 19) is very critical of the relative weakness of the opposition in the control bodies of the French Parliament. According to the committee, this weakness contributes to making it difficult for the parliament to exercise its constitutional control functions.

7.4.1. Political control of the government

57. Members of opposition political groups should dispose of different means to supervise, scrutinise and control the action and policy of governments.

7.4.1.1. Rights in order to be informed (access to information)

The right to ask written and oral questions (sometimes followed by a debate)

58. All parliamentarians should have the right to ask questions, although the number of questions during a certain period may be limited. There is a great variety of question types, ranging from written questions to the government to oral questions followed by a genuine debate. It is obvious that for the latter category more far-reaching conditions may often be required. When too many oral questions have been tabled the time available for answering questions is generally apportioned among the political groups.

Ordinary questions – Question time

59. Question times exist in practically all parliaments. Those parliaments that convene weekly generally hold a weekly question time. In the House of Commons during questions to government, opposition front-bench spokesmen are given the opportunity to ask more than one question, while "ordinary" members may put one question. In the Slovenian National Assembly the first four questions during question time are put by opposition deputies and a deputy of the majority (governing coalition). Subsequently, during the question time, two opposition members are followed by a majority member. The opposition leader in the Lithuanian Parliament may put two questions at the start. In many parliaments there is a rotation among different political groups during question time (France, House of Commons of the United Kingdom).

Questions with debate – Interpellation

60. In the French Senate a single senator may move an oral question with debate. It will in general be held quicker if it is supported by 30 senators. In the German Bundestag a number of members corresponding to that necessary for forming a political group may table a question with debate (*Große Anfragen*). The government will reply in writing and the matter will be debated in plenary.

61. Interpellations (or in Germany and Austria *Kleine Anfragen*) generally require a quorum: in Albania: 7 members or a political group; in Poland: 15 members; in "the former Yugoslav Republic of Macedonia": 5 members; in Georgia: 10 members; in Finland: 15 members; in Germany (Bundestag): a number of members corresponding to that required for forming a political group.

The right to ask for the holding of debates, including urgent and current affairs debates

62. For the requests to hold debates, including urgent or topical ones, a minimum number of members may be required. The opposition might also be given the possibility to choose on certain days subjects for debate, for example one day of the parliamentary week ("opposition time"). In some parliaments in Europe members may also initiate current affairs debates. The quorum is very low. In Austria it is five members and in the

31. Analyses are largely based on Giulj, S., op. cit.

German Bundestag 5% of members or one political group. According to the replies to questionnaires available through the European Centre for Parliamentary Research and Documentation, urgent debates are possible in most of the respondent parliaments. In Austria and Denmark an urgent debate may be held at the request of 5 and 17 members respectively.

The right to ask for the holding of a plenary sitting (convening the parliament)

63. Only some parliaments specify in their rules of procedure the number of members necessary to request the convening of a plenary sitting of the parliament or a chamber. In the German Bundestag one third of the members, in the Danish Parliament two fifths and in the Spanish Congress one fifth of the members (or two political groups) may make such a request. In the Congress, however, the agenda of the requested sitting must have been adopted previously by the board of spokespersons. In other parliaments the Bureau (for example, in the Belgian House of Representatives) or a similar body (the Standing Committee in Portugal) may on the proposal of political groups or members ask for the holding of a plenary sitting. One German *Land* may request a plenary sitting of the German Bundesrat.

7.4.1.2. The right to sanction (moving a vote of no-confidence and interpellations)

64. All parliamentarians should have the right to submit interpellations, at the end of which motions can be tabled.

65. Sometimes the constitution settles the modalities for votes of no-confidence in parliaments. In such case the parliamentary rules of procedure may include additional details, such as the quorum. It is sometimes set at one fourth, one fifth or one tenth (for example, Sweden, Italy (Chamber of Deputies), France (National Assembly)). In some parliaments (Norway) a single member may table a motion of no confidence. Obviously the adoption of a motion will require a majority vote. In this context it should be said that in bicameral systems not every chamber of a national parliament may have the general right to move a vote of no-confidence. In Belgium, for instance, only the House of Representatives can question the government's political responsibility and vote on a motion of confidence or no-confidence; whereas the Senate can no longer sanction the government politically.[32]The Balladur Committee (see paragraph 19) adopts a quite reserved stance as regards the usefulness of this "weapon", taken into account the obvious difficulty for the opposition to outvote the majority.

7.4.1.3. Rights regarding the budget procedures

66. Budget control should not be underestimated, as it has to be considered as one of the most important aspects of control for the opposition on the government's policy. The chairmanship of the committee responsible for budgetary matters could be granted to a member of the opposition, as is the case, for example, in the British House of Commons, the French National Assembly and the German Bundestag. This has to be seen as a confidence-building measure and could reduce objections of the opposition concerning budgetary figures given.

The recent report of the Balladur Committee (see paragraph 19) proposes:

– the setting up of a committee on the audit;

– close co-operation between the finance (audit) committees and the Court of audit.

7.4.1.4. The right of inquiry

67. Parliamentarians should have the right to ask for the setting-up of a committee of inquiry, and to become a member of it (for example, German Bundestag). Different conditions are set up for forming such committees. In the parliaments of Austria, Estonia, France, the Netherlands and Spain, the request takes the form of a motion and in the Italian chamber that of a motion for a bill to be adopted by a majority of the respective chamber.

In other parliaments, the quorum is:

– one fifth of the members of the chamber (Portugal, Hungary);

– one quarter of the members of the chamber (Albania, German Bundestag);

32. The "special" position of the Belgian Senate should be seen within the broader context of continuous Belgian state reforms and reflection on a new role for the Senate.

– one third of the members of the chamber (Slovenia, Norway (one third of the members of the Committee on Scrutiny and Constitutional Affairs));

– 20 members ("the former Yugoslav Republic of Macedonia");

– 15 members (Sejm of Poland).

68. Membership of a committee of inquiry is generally based on the strength of the political groups in the chambers. In the Georgian and Estonian parliaments the opposition and the majority are guaranteed equal representation on committees of inquiry. The chairmanship of committees of inquiry is sometimes given to the opposition (for example, Croatia). In France and in Slovenia the political group which has successfully requested the formation of a committee of inquiry obtains the chairmanship (or in France the post of rapporteur, which is equally important). According to the Balladur Committee (see paragraph 19), the minority should have the possibility to demand the creation of one committee of inquiry per year.

7.4.1.5. The right to organise hearings

69. Relatively few pieces of information were received concerning the organisation of hearings by parliamentary committees or similar bodies. As far as can be seen, the quorum for such requests is low. In Denmark, three members of a committee and in Norway and Slovenia one third of committee members are required. In the Belgian House of Representatives a hearing may be organised with the agreement of the Bureau or the president. Such parliamentary hearings should be public unless otherwise decided (see, in this connection, Proposal 39 of the Balladur Committee (paragraph 19 above). Furthermore, if a quorum of one quarter is reached, the minority should be able to enforce the organisation of a parliamentary hearing.

7.4.1.6. The right to inform the public

70. Parliamentarians should have access to public radio and television channels. It is therefore important to have regulations securing the fair and well-balanced coverage by the media of the political debate.

7.4.2. Legislative work

7.4.2.1. Participation in the management of parliamentary business and in committees of parliament

71. The involvement of the opposition in the legislative mechanisms is first of all measured by the participation and the power of negotiation in the steering bodies and in the committees of the parliament.

Participation in the management of parliamentary business

72. As already mentioned above, the president (speaker) of the parliament must be impartial and fair in exercising his or her functions. If there are vice-presidents, a fair share of these posts should be set aside for members of the opposition. In some chambers with a limited number of political groups, all of them have a vice-president.

73. Members of opposition political groups should have positions of responsibility in parliament (officers of parliament). They should be able to participate and have the power to negotiate as members of the governing bodies (bureau/conference of presidents/college of quaestors). Therefore the composition of these steering bodies should respect the principle of proportionality, thus reflecting the political composition of the chamber.

74. The replies to the above-mentioned 2004 questionnaire (see paragraph 3) of the Committee on Rules of Procedure and Immunities show that:

– more than a third of all vice-presidents of 25 national parliaments in Europe belong to the opposition. However, as at the autumn of 2005 only in Norway was the Speaker of the Parliament a member of the opposition;

– less than one third of the members of the bureau (or conference of presidents) of these parliaments belong to the opposition.

7.4.2.2. Participation in committees and appointment of rapporteurs

Participation in committee activities (composition, chairmanship and rules)

75. In general, the composition of the committees is based on the principle of proportional representation of the political groups and the leading positions in committees are distributed according to the strength of the political groups. However, in order to favour to a certain extent the opposition, not all posts are allocated according to the strict majority principle. The members of the opposition should be able to be members of the bureaus of the committees, thus allowing them to have some influence on the agenda setting of the committee meetings. In particular, the opposition should be granted the chairmanship of parliamentary committees that are monitoring the government's action, such as the budget committees.

76. According to tradition and customs the audit committees or the committees on budget and finance are allocated to the opposition in the parliaments of Lithuania, Estonia (State Budget Control Committee), Slovenia (Committee on the Budget and Control of Public Finance) and "the former Yugoslav Republic of Macedonia" (Committee on Finance and the Budget). The committees on special services are chaired by opposition members in the parliaments of Poland (Sejm), Slovakia (oversight committees for intelligence services) and Slovenia (Committee on Supervision of the Work of the Security and Intelligence Services).

77. Just as the other members of a committee, the opposition members should have speaking and voting rights, as well as the right to table amendments and to move a procedural motion in committee. In general, there should be no limitations on these rights in committee. However, a certain number of members might be necessary in order to request that the quorum be ascertained and for holding meetings. For instance, this number might be fixed at a third of the committee members to ask for the holding of a meeting, and one sixth of the committee members to request that the chairperson ascertains whether the quorum is present.

Appointment of rapporteurs and contents of reports

78. It should be a general standard that all members of a committee, including opposition members, may be appointed as rapporteurs in committee. In committees considered of major importance for the opposition, such as committees to control secret services, committees of inquiry or budget committees, solutions could be found where the opposition holds the committee chair and a member of the majority is the rapporteur or vice versa.

79. If the opposition does not agree with a committee report or a draft text included in the report, it should have the possibility to append a dissenting opinion to the report or to have its divergent views integrated into the report. Another solution might be to allow the presentation of so-called minority reports.

80. All members of a committee should have the right to ask for the hearing of one or more experts by a committee, in particular when examining complex or controversial matters.

7.4.2.3. Participation in the organisation of parliamentary work

Right to request the holding of extraordinary sessions/debates

81. The quorum for requesting the holding of extraordinary sessions is generally one fifth. But there are also chambers that request one third or one quarter of the members.

Agenda setting

82. Agendas of plenary sessions are generally prepared by the bureau/conference of presidents or advisory bodies of the president of the parliament, in which political groups belonging to the opposition are represented. In addition, individual members of the opposition should be able to contribute to the agenda setting. Their rights and interests must be acknowledged in the parliamentary procedure. Those principles are at the origin of a provision in the rules of procedure of those legislators that reserve in the order of business a sitting or a time slot for debate of members' bills – including bills from members of the opposition – instead of government bills which tend sometimes to take up the whole of the parliament's business.[33]But one does not

33. ECHR, judgment of 23 April 1992, *Castells v. Spain*, paragraph 42; judgment of 8 June 1999, *McGuinness v. United Kingdom*, paragraph 1 (inadmissible); judgment of 27 February 2001, *Jerusalem v. Austria*, paragraphs 36 and 40; judgment of 11 June 2002, *Selim Sadak e.a. v. Turkey*, paragraph 34; judgment of 17 December 2002, *A. v. United Kingdom*, paragraph 79; judgment of 30 January 2003, *Cordova v. Italy (No. 1)*, paragraph 59; and judgment of 30 January 2003, *Cordova v. Italy (No. 2)*, paragraph 60.

necessarily need a formal provision. An informal practice enabling a member of parliament – including a member of the opposition – to ask that one of his bills be put on the agenda suffices (provided, of course, that he/she has a fair chance that his/her request will be honoured).

83. Some parliaments have adopted provisions concerning opposition days during plenary sessions. In the Georgian Parliament, a political group of the majority or opposition may demand that a day be appointed for political debates. This is granted in general once during a plenary working cycle of the Georgian Parliament. During such political debates the majority and opposition have the same speaking time, forty-five minutes each. Members not attached to a political group are given five minutes. According to the French parliamentary system the subject of eight sitting days per year may be distributed among the political groups, in proportion to their strength. During the 2004-05 session, the opposition had three sittings. In Portugal opposition groups with 10 members or less may set the order of business of one plenary sitting in each legislature session; with more than 10 members and up to one tenth of all members, they may do this for two plenary sittings; and for each additional tenth of all members, they may establish the order of business of two further sittings.

84. If special sittings exist for the examination of private members' bills and/or the control of government action, there should be an "opposition day" where the minority can submit its own proposals.

85. In the House of Commons (United Kingdom) twenty days are allotted in each session for proceedings on opposition business, seventeen of which shall be at the disposal of the leader of the opposition and three of which shall be at the disposal of the second largest opposition party; and matters selected on those days shall have precedence over government business. In the House of Lords, one Thursday a month (until the Whitsun recess) is set aside for two short debates of no longer than two and a half hours. Topics are suggested by back-bench or cross-bench members and chosen by lot.

7.4.2.4. Participation in the legislative procedures

86. Every year the parliaments vote an important number of laws and the parliamentary debates can be useful for the members of the opposition to voice their ideas.

Right to table bills and motions on legislative matters

87. As a general principle, all members – both of the majority and the opposition – should be able to table bills and motions on legislative matters. It should be stressed that the legislative function might even be more important for the members of the opposition; as the members belonging to the majority might be more inclined to await government initiatives. To give more substance to this right, the rules of procedure might for instance provide that at least once a month the committees meet for consideration of members' bills, or that a bill that has been rejected by a committee may nevertheless be sent to the plenary session at the request of its submitter, who shall be heard by the chamber.

Rights in plenary sessions

Rights to speak and vote

88. Parliamentary deliberation can be very useful for the members of opposition to publicise their stance. It is therefore crucial for these members to be able to intervene in the debate and in the voting.

89. Every member of parliament should have the right to speak and to vote in all plenary debates. All members of parliament must be able to express their ideas freely. In a democratic society, parliament is an indispensable forum for political debate. The European Court of Human Rights has held on several occasions that, "while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He/she represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament … call for the closest scrutiny on the part of the Court".[34]

90. However his/her right to speak may be restricted for the sake of limiting the duration of debates and of efficiency, on the basis of objective criteria. The ECPRD request mentioned in paragraph 46 above showed that speaking time is allocated in many different ways. In seven Council of Europe member states (including Austria, Belgium and Germany) speaking time is allocated to all political groups according to their size. In eight Council of Europe member states (including the Czech Republic, Finland and the Netherlands) speaking

34. See for example, Article 48, paragraph 3, of the French Constitution and Article 48.6 of the Rules of Procedure of the French National Assembly.

time is generally distributed more freely among those members who wish to take the floor. Other parliaments (for example, the French National Assembly) grant all political groups the same minimum speaking time while the remainder of the debating time is distributed among the groups according to their strength. One of the advantages of the proportional method is that the allocation of speaking time reflects the election results. On the other hand, the absence of specific rules, or an equal allocation of speaking time between majority and opposition, which has been suggested in France and Ukraine, and according to information available is applied in the parliaments of Georgia and Turkey, may be beneficial for the opposition, especially in those member states where the opposition is relatively weak.

91. It should also be avoided that debates are always initiated by a representative of the majority political group; a rotation system may be preferable.

92. In this context, a special notice could be taken of the phenomenon of “filibustering”, which is, of course, not very useful and contributive for parliamentary work. However, it may sometimes be considered as the last resort for the opposition in order to block the normal course of a parliamentary debate. Moreover, the opposition must be careful not to give a less than flattering impression of parliament among the general public in resorting to time-wasting devices and theatrical outbursts.

93. It may also be appropriate to define by agreement the speaking time reserved for the head of government and ministers and the main opposition leader(s) in parliament.

Right to present procedural motions (requests to ascertain that there is a quorum for a debate, to refer a report back to committee, to change the agenda)

94. For the parliamentary opposition, it may occasionally be useful that a debate under way is deferred until one or more conditions are fulfilled, or simply closed. In other cases it may be preferable to refer back to the relevant committee a report under discussion. Such a request may be appropriate in the case where a vote on the draft text contained in the report is to be avoided. Not only the parliamentary majority but at least the main opposition group should have the possibility to table such a motion.

95. The ECPRD request mentioned above shows that a single member of parliament may submit motions in all of the responding parliaments. However, certain kinds of procedural motions require additional support. A case in point concerns objections against the agenda of a plenary session. In Ireland the support of one parliamentary group, in the Italian Senate eight senators and in the Polish Sejm 15 deputies (or a political group) is needed. In the Belgian House of Representatives eight members are required for motions aimed at changing a proposed agenda while the corresponding figure concerning adopted agendas is one third of the members.

96. A certain number of members, for instance a sixth of the members, might be required to ascertain whether there is a quorum. This might for instance be important when, in the case of low attendance, the opposition wants to avoid the adoption of a problematic text.

Right to table amendments

97. For reasons of a proper organisation of debates, parliaments might limit the admissibility of amendments in plenary debates. Often the rules of parliament chambers specify that the relevant committee, a political group or a certain number of members (quite often a relative low quorum) may move amendments.

7.4.3. Control of legality of draft parliamentary texts and constitutional review of adopted laws

98. In several parliaments, neither control of legality, nor constitutional review exists (Denmark, Finland, Ireland, Lithuania, the Netherlands, Norway, “the former Yugoslav Republic of Macedonia” and United Kingdom). Another group of parliaments have the possibility to request a legal check of draft laws or other draft parliamentary acts before their adoption, but may not lodge an application with the Constitutional Court in order to assess if a law fully respects the constitution (for example, Sweden, Estonia). In Poland, Georgia and Spain parliaments only have the possibility to ask for a constitutional review of adopted laws.

99. The following particularities are noteworthy. The German Bundesrat may petition the Constitutional Court in the case of a dispute with another constitutional organ of Germany or concerning the ban of a political party. However, the governments of the German *Länder* may ask for a constitutional review of adopted laws. For several parliaments there exist limitations for recourse to tribunals. In Sweden, a parliamentary committee

(or five of its members) may request an opinion from the Swedish Council on Legislation on a draft bill. In Estonia a member who feels that a Bureau decision violates his/her rights may file an appeal to the Supreme Court. In France the rules of procedure and their changes may be submitted for a constitutional review.

100. The conditions for members of the opposition to lodge a request for a constitutional review of an adopted law are currently discussed in the German Bundestag. The proposal has been made to lower the quorum from one third to one quarter. Four of the seven experts invited to a meeting of the Committee on Rules of the Bundestag in May 2007 expressed themselves in favour of reducing the quorum to one quarter.

101. The quorum for a constitutional review of a law is sometimes one third of the members of the chamber (Austria, Germany, Slovenia) or lower (Albania, Bulgaria, Lithuania, Slovakia, Turkey: one fifth), Poland (50 deputies or 30 senators), Spain (50 deputies or 50 senators) and Portugal (one tenth). In Belgium the Presidents of the Senate and of the House of Representatives may lodge a constitutional review if requested by two thirds of the members of the relevant chamber.

8. Responsibilities of the parliamentary opposition

102. The purpose of the Seminar of the Committee on Rules of Procedure and Immunities in Stockholm in December 2004 was to consider the role of the opposition in a democratic parliament, and, in particular, the rights and resources as important aspects of the opposition's abilities to fulfil its essential task in the success of parliamentary democracy.

103. The main function of the opposition in a working democracy is to offer a reliable alternative to the ruling party. To this end the best training for the opposition would be to prepare itself to carry out in the long term the responsibilities to which it legitimately aspires. It should exercise responsible and constructive opposition by proposing valid alternatives to the political choices made by the government. It serves no purpose to pointlessly hinder government performance. The opposition should rather encourage it to improve its action for the sake of the general interest.

104. Furthermore, the opposition has the important function of criticism and oversight of governmental action.

105. As is rightly expressed in the Libreville declaration of the IPU (see above paragraphs 6 and 27) the responsibilities of the opposition are essentially defined by political and behavioural rules, not by constitutional norms or parliamentary texts. The general principle being that all members of parliament – majority and opposition alike – are required to exercise their responsibilities with due respect for the constitution and the laws in force (this is also usually the formula used for the oath-taking in national parliaments).

106. During the seminar in Stockholm it was observed that opposition members cannot only claim rights and means but should also show willingness to use them and make their best efforts to enhance the efficiency of parliament as a whole and not only to carry out their natural but perhaps insufficient role of criticism. In giving rights to the opposition it is at the same time made responsible. These considerations have also been included in Assembly Resolution 1547 (2007) on the state of human rights and democracy in Europe.

107. The duties and responsibilities do not necessarily require codification in the rules and could, to a certain extent, be included in any code of conduct of members.

108. However, it may be useful in case the business of a parliament suffers from obstruction by opposition political groups, if the rules include some procedural safe-guards.

9. Concluding remarks

109. While some parliaments in Europe have a system which is essentially marked by opposition to the parliamentary majority, it is more common that parliaments are organised around political groups. However, all parliaments in Council of Europe member states grant rights to the parliamentary minority.

110. Adequate rules and regulations are important for the efficient work of a parliament in general, and of the parliamentary opposition (or the minority in parliament) in particular. However, there are also further aspects which matter in parliamentary practice, such as the attitudes towards other members, distinguishing what is substantial and what is personal, mutual respect for each other's roles.

111. In general, members of parliament are aware that they take responsibility for the whole of the nation. Therefore, they try to demonstrate political maturity and a will to compromise. It is important to bear in mind that the party in power today may be in opposition tomorrow.

112. It is to be welcomed that procedural rights of the opposition are currently of political relevance in several national parliaments, in particular with respect to the quorum for certain opposition rights. Furthermore, one should note several changes which the notion of opposition is undergoing with a view to modernising political debate. There is a tendency not only to privilege members of the opposition (for example, for speaking time) but also to achieve full parity between the majority and the opposition concerning some rights (for example, topical questions to governments), irrespective of their strengths (see article by Bernard Rullier, paragraph 18 above). More attention is also given to the opposition rights in the second chambers. Three parliaments have indicated that they are working on the status of the opposition.

Reporting committee: Committee on Rules of Procedure and Immunities.

Reference to committee: Doc. 10488 and Reference No. 3069 of 24 April 2005 (extended on 16 March 2007).

Draft resolution unanimously adopted by the committee on 16 November 2007.

Members of the committee: Mr Andreas **Gross** (Chair), Mr Andrea Manzella (1st Vice-Chair) (alternate: Mr Andrea **Rigoni**), Mrs Maria Postoico (2nd Vice-Chair), Mr Erol Aslan **Cebeci** (3rd Vice-Chair), Mr Miloljub Albijanić, Mr Lars Barfoed, Mr Ivan Brajović, Mrs Anne Brasseur, Mr Jonas Čekuolis, Mrs Helen D'Amato, Mr Miljenko Dorić, Mr Vangjel Dule, Mr Herbert Frankenhauser, Mr John Greenway, Mr Attila Gruber, Mr Sefer Halilović, Mr Gerd Höfer, Mr Serhiy Holovaty, Mr Ali Huseynov, Mr Luchezar Ivanov, Mr Morgan Johansson, Mr Armand Jung, Mr Erik **Jurgens**, Mrs Mojca Kucler-Dolinar, Mrs Irine Kurdadzé, Mr Jan Filip Libicki, Mr Noël Mamère, Mr Alan Meale, Mr Miloš **Melčák**, Mrs Ana Caterina Mendonça, Mr Peter Mitterer, Mr Nikolaos Nikolopoulos, Mrs Kristiina Ojuland, Mr Alexey Ostrovsky, Ms Eli Sollied Øveraas, Mr Julio Padilla, Mr Christos Pourgourides, Mr Armen Rustamyan, Mr Ellert B. Schram, Mr Yuri **Sharandin**, Mrs Tuulikki Ukkola, Mr Vasile **Ungureanu**, Mr Giuseppe Valentino, Mr Karim **Van Overmeire**, Mr G.V. Wright, Mr Blagoj **Zašov**.

NB: The names of those members present at the meeting are printed in bold.

See 6th Sitting, 23 January 2008 (adoption of the draft resolution); and Resolution 1601.