



Doc. 11718

26 September 2008

Candidates for the European Court of Human Rights

Committee Opinion¹

Committee on Equal Opportunities for Women and Men

Rapporteur: Ms Lydie ERR, Luxembourg, Socialist Group

A. Conclusions of the committee

The Committee on Equal Opportunities for Women and Men supports the draft resolution on the condition that the amendments it proposes are accepted, to ensure that the Bureau of the Assembly (on which both the Committee on Legal Affairs and Human Rights, and the Committee on Equal Opportunities for Women and Men are represented) retains its decision-making powers when it comes to proposing to the Assembly the rejection of candidate lists, and to ensure that the Committee on Equal Opportunities for Women and Men is consulted before the Bureau takes its position.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 4, in the paragraph beginning with “Such exceptional circumstances...”, replace “of both the Sub-Committee and the Committee on Legal Affairs and Human Rights” with:

“of the Sub-Committee, the Committee on Legal Affairs and Human Rights and the Bureau of the Assembly”

Amendment B (to the draft resolution)

In paragraph 4, in the paragraph beginning with “Such exceptional circumstances...”, add the following new second sentence (before the sentence beginning with “This position...”):

“Before taking position, the Bureau shall consult the Committee on Equal Opportunities for Women and Men”.

C. Explanatory memorandum by the rapporteur, Ms Err

Chronology of events

1. The last time the Committee on Legal Affairs and Human Rights tried to amend the Parliamentary Assembly Resolutions which govern the composition of candidate lists for the European Court of Human Rights (hereafter: “the Court”), this Committee was firmly opposed. Based on the Committee’s opinion in Doc. 11243 (2007) as presented by the then rapporteur, Mr Mendes Bota, the Assembly rejected the draft resolution put forward by the Committee on Legal Affairs and Human Rights in April 2007.

1. See [Doc. 11682](#) tabled by the Committee on Legal Affairs and Human Rights.



2. As a result, the Assembly's position on the need for states to include at least one member of the under-represented sex on the Court (currently still women) on their lists of three candidates for the position of judge on the Court remains unchanged.

3. What has changed is that, following the defeat of the Committee on Legal Affairs and Human Rights' draft resolution in the Plenary in April 2007, upon the proposal of Malta (the only country which has – twice – put forward all-male candidate lists in defiance of the Assembly's rules), the Committee of Ministers asked the European Court of Human Rights for an advisory opinion on the matter. This opinion (the Court's first) was delivered on 12 February 2008, and is available on the Court's internet site². I would like to underline that the opinion was addressed to the Committee of Ministers and is of an advisory character. The Assembly is thus not bound by it³.

The Committee's position

4. This Committee, in principle, opposes any attempt to weaken the few gender-based quotas the Assembly has put into place in the past few years.

5. However, the committee does not wish to push the Assembly into an open confrontation with the Committee of Ministers, one of its member states, and/or the European Court of Human Rights.

6. It is thus willing to accept that, in truly exceptional circumstances, states be allowed to derogate from the requirement to include a member of the under-represented sex on their candidate lists to the Court, if the Assembly itself so decides.

7. For this committee, such exceptional circumstances can only exist if:

- a. "the Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains a candidate of the under-represented sex": this means that the Contracting Party has to have run an open and transparent procedure on the national level to select the candidates, and that the selecting authority/panel was gender-balanced to ensure the absence of sex discrimination;
- b. "the Contracting Party has not been able to find a candidate of the under-represented sex who satisfies the requirements of Article 21 § 1 of the European Convention on Human Rights": this means that no candidate of the under-represented sex of "high moral character" and either possessing "the qualifications required for appointment to high judicial office" or being a "jurisconsult of recognised competence" has come forward/ been found;
- c. these exceptional circumstances have been duly considered so by "double majorities" in the Sub-Committee on the Election of Judges, the Committee on Legal Affairs and Human Rights, and the Bureau of the Assembly, and this position has been ratified by the Assembly itself;
- d. the Committee on Equal Opportunities for Women and Men has been consulted by the Bureau, as the specialised committee dealing with equality questions, and thus best placed to give an opinion on whether the exceptional circumstances claimed by the Contracting Party truly exist.

8. The committee is not willing to accept that the power to propose whether or not a candidate list should be rejected be taken away from the Bureau of the Assembly – upon which both the Committee on Legal Affairs and Human Rights and this committee are represented. The committee is proposing an amendment which seeks to correct this (Amendment A).

9. Let me explain the committee's position on this point: The Committee on Legal Affairs and Human Rights has, so far, had no decision-making powers when it comes to candidate lists for the European Court of Human Rights. It is the Bureau which has this power (subject to ratification by the Assembly)⁴, with the Sub-Committee on the Election of Judges making recommendations to it directly.

2. See Advisory Opinion on certain legal questions concerning the lists of candidates with a view to the election of judges to the European Court of Human Rights, 12.02.2008, at: <http://www.echr.coe.int/echr>.

3. In the Council of Europe Convention system, no possibility is foreseen for the Parliamentary Assembly to itself seize the Court, nor is it foreseen that the Court may give an opinion on political matters.

4. The candidates are interviewed by the Sub-Committee on the Election of Judges to the European Court of Human Rights, which is a politically and geographically balanced body. The Sub-Committee makes its recommendation directly to the Bureau (and the Assembly), in contrast with other Assembly Sub-Committees whose decisions have to be ratified by the full Committee they depend on.

10. However, the Sub-Committee on the Election of Judges – while politically balanced – is not gender balanced. While it is encouraging that the rapporteur of the Committee on Legal Affairs and Human Rights, Ms Bemelmans-Videc, suggests in her explanatory memorandum that the Sub-Committee invite the Chairperson of the Committee on Equal Opportunities for Women and Men (or his/her representative) to take part as an observer (with no right to vote) in a possible exchange of views with the chairperson of the Assembly national delegation concerned, this does not make up for the fact that the Sub-Committee on the Election of Judges has no expertise in the gender equality area. The Sub-Committee – and indeed also the full Committee – may thus find it quite difficult⁵ to evaluate whether or not “the Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains a candidate of the under-represented sex”, and whether or not the Contracting Party truly could “not find a candidate of the under-represented sex who satisfies the requirements of Article 21 § 1 of the European Convention on Human Rights”.

11. The Committee on Equal Opportunities for Women and Men would thus like to be formally associated with the decision on whether or not truly exceptional circumstances exist in a country, which would force it to put forward a candidate list exclusively composed of members of the over-represented sex. (This request is taken up in Amendment B). This committee does not oppose the addition of the Committee on Legal Affairs and Human Rights to the validation proceedings, as long as the Bureau is not excluded from its current role of proposing to the Assembly the rejection of candidate lists, and the Bureau consults the only specialised committee – this committee – before taking its decision.

12. I feel that it is necessary to point out here that evaluating whether a country truly cannot find a woman national qualified enough to be a candidate for the post of judge on the European Court of Human Rights is not simply a procedural or a legal question: it is a political question, and a gender equality question. Thus both the Committee on Equal Opportunities for Women and Men (as the committee specialised in questions of gender equality) and the Bureau (as the Assembly body responsible for political questions) must be associated.

Conclusion

13. In conclusion, the Committee on Equal Opportunities for Women and Men supports the draft resolution on the condition that the amendments it proposes are accepted, to ensure that the Bureau of the Assembly (on which both the Committee on Legal Affairs and Human Rights, and the Committee on Equal Opportunities for Women and Men are represented) retains its decision-making powers when it comes to proposing to the Assembly the rejection of candidate lists, and to ensure that the Committee on Equal Opportunities for Women and Men is consulted before the Bureau takes its position.

Reporting committee: Committee on Legal Affairs and Human Rights.

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

Reference to committee: Doc. 11532, Reference N° 3434 of 18 April 2008

Opinion adopted by the committee on 12 September 2008

Secretariat of the committee: Mrs Kleinsorge, Mrs Affholder, Mrs Devaux.

5. It should be recalled that the Sub-Committee on the Election of Judges was willing to believe that truly exceptional circumstances exist in Malta – a country of 400.000 inhabitants with an (admittedly small) number of distinguished female lawyers – and that the Committee on Legal Affairs and Human Rights was willing to change the rules of the Assembly for this, one single country... rules with which all other countries, including much smaller ones (with correspondingly fewer distinguished female lawyers), had complied with.