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The election process for the Secretary General of the Council of Europe

Report¹

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr John GREENWAY, United Kingdom

Summary

During its part-session of June 2009 the Parliamentary Assembly is scheduled to elect a new Secretary General of the Council of Europe who will take office on 1 September 2009. The way the current process was initiated by the Committee of Ministers since October 2008 raises several questions. Following the Ministers' Deputies' proposal to shortlist the candidates, the Assembly seized the Committee on Rules of Procedure, Immunities and Institutional Affairs on 27 April 2009. This report presents the evolution and current state of the election process for the Secretary General and examines several issues which have influenced this election process so far, some of which cause grave concern to the Assembly.

The Committee on Rules of Procedure proposes in the draft resolution that "the Assembly considers that the Committee of Ministers, at its ministerial session on 12 May 2009, should adopt a resolution on the election of the Secretary General of the Council of Europe with a view to forwarding to the Assembly a list which will allow Assembly members to make the widest possible choice among the candidates".

1. Reference to committee: Reference No. 3530 of 27 April 2009.



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A. Draft resolution

1. The term of office of the current Secretary General of the Council of Europe will come to an end on 31 August 2009. In October 2008, the process for the election of the (new) Secretary General was initiated.
2. The Parliamentary Assembly considers that, during this process, several issues have arisen which seriously impact the election process:
 - 2.1. the addition in May 2007 by the Committee of Ministers, without prior consultation with the Assembly, of new provisions concerning the qualifications of the candidates for this post;
 - 2.2. the possibility of a shortlisting of candidates;
 - 2.3. the adoption by the Ministers' Deputies on 23 April 2009 of a draft resolution restricting the number of candidates which appears to pre-empt the possibility of genuine consultation of the Assembly in the Joint Committee on 29 April 2009.
3. The Assembly considers that any shortlisting of candidates would limit its opportunities to exert its right of free political choice between the candidates.
4. The Assembly also considers that the decision taken by the Committee of Ministers at its 117th Session in May 2007 was not incorporated into the Council of Europe's Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly, and therefore should not be relied upon by the Committee of Ministers without the formal agreement of the Assembly.
5. Therefore, the Assembly considers that:
 - 5.1. the Ministers' Deputies should review their proposals (draft resolution) of 23 April 2009 concerning transmission to the Assembly of the candidates for the post of Secretary General of the Council of Europe;
 - 5.2. the Committee of Ministers, at its ministerial session on 12 May 2009, should adopt a resolution on the election of the Secretary General of the Council of Europe with a view to forwarding to the Assembly a list which will allow Assembly members to make the widest possible choice between candidates.
6. The Assembly also considers that the Committee of Ministers should re-establish with it a genuine dialogue to ensure a more efficient functioning of the Council of Europe.

B. Explanatory memorandum, by Mr Greenway

1. Introduction

1. On 27 April 2009 the Parliamentary Assembly decided to hold, during the current part-session, an urgent debate on the election process of the Secretary General of the Council of Europe and referred the matter to the Committee on Rules of Procedure, Immunities and Institutional Affairs for report.

2. This draft report will summarise the evolution and current state of the election process for the Secretary General of the Council of Europe, who should take office on 1 September 2009. Furthermore, the institutional and regulatory framework for the election of the Secretary General will be set out briefly. Finally, the rapporteur will submit observations on the respect during this election process of the rules and past practice governing the election of the Secretary General and submit proposals for Assembly action.

2. Evolution and current state of the election process

3. At the Joint Committee meeting of 2 October 2008, the President of the Assembly informed the meeting of the Assembly's intention to proceed with the election of the Secretary General of the Council of Europe at its June 2009 part-session (22-26 June 2009).

4. At the 1037th meeting of the Ministers' Deputies (8 October 2008), the Deputies "fixed 6 March 2009 as the closing date for submission of candidates for the post of Secretary General, it being understood that the candidates should comply with the criteria set by the Ministers at their 117th Session".

5. By that date, four candidatures had been submitted by the governments concerned, namely: Mr Luc Van den Brande (Belgium), Mr Włodzimierz Cimoszewicz (Poland), Mr Mátyás Eörsi (Hungary) and Mr Thorbjørn Jagland (Norway).

6. At their 1055th meeting (22-23 April 2009), following a succession of votes, the Ministers' Deputies decided to propose to the Ministers, at their 119th Session (12 May 2009) in Madrid, the text of a draft resolution transmitting to the Assembly a list of two names: Mr Cimoszewicz and Mr Jagland (see Appendix II).

7. Prior to the transmission by the Committee of Ministers of a recommendation to the Assembly for the appointment of the Secretary General, consultation of the Assembly is foreseen at the Joint Committee scheduled for 29 April 2009 in accordance with the relevant regulations.

8. The final decision on the submission of the list of candidates to the Assembly will be taken by the Committee of Ministers at its ministerial session on 12 May 2009 in Madrid.

3. Institutional and regulatory framework

3.1. The Statute of the Council of Europe and the regulations relating to the appointment of the Secretary General

9. Article 36.b of the Statute of the Council of Europe provides that: "The Secretary General ... shall be appointed by the Consultative (Parliamentary) Assembly on the recommendation of the Committee of Ministers."

10. Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly (see Appendix I) were adopted in 1956 (and subsequently amended in 1961 and 1962) by the Committee of Ministers with the agreement of the Assembly. It is useful to recall that these regulations were adopted following a proposal from the Assembly, accepted by the Committee of Ministers, to set up a joint working party after problems had arisen concerning the list of candidates for an election of the Deputy Secretary General of the Council of Europe in 1955. The first draft of the regulations presented to the joint working party had been prepared by the then Secretary General ("Clerk") of the Parliamentary Assembly.²

2. Before the adoption, in 1956, of the "Regulations", the Assembly had obtained in 1953 from the Committee of Ministers "that before transmitting to the ... Assembly a recommendation for the appointment of the Secretary General ... the Committee of Ministers will consult the Assembly on the subject, normally through the medium of the Joint Committee" (Resolution (53) 30).

11. These regulations govern, *inter alia*, the criteria for the choice of candidates (clause 2), for the consultation of the Assembly by the Committee of Ministers (clause 4) and for the nomination of candidates (clause 5). In clause 3, it is foreseen that “the Committee of Ministers shall examine the list of candidates” and that the latter may be summoned for interview.

12. Clause 4, for its part, specifies that: “Before transmitting to the Consultative (Parliamentary) Assembly a recommendation for the appointment of any one of the three senior officials of the Secretariat General, the Committee of Ministers shall consult the Assembly through the medium of the Joint Committee.”

13. As to the nomination of candidates, clause 5 specifies that: “Unless it has been otherwise agreed after discussion in the Joint Committee, the Committee of Ministers shall draw up a list containing at least two names, which shall be submitted to the Assembly.” This clause also entitles the Committee of Ministers to list the names in order of preference.

3.2. The decision of the Committee of Ministers of May 2007 and subsequent developments

14. At its 117th Session (10-11 May 2007) the Committee of Ministers (ministerial level) took the following decision: “The Committee agrees, concerning the procedure for the election of the Secretary General, that it will henceforth present to the Parliamentary Assembly candidates who enjoy a high level of recognition, are well-known among their peers and the people of Europe, and have previously served as heads of state or government, or held senior ministerial office or similar status relevant to the post, and asks the governments of member states to present candidates who match this profile.”

15. At their 1047th meeting (4 February 2009), the Ministers’ Deputies adopted a draft decision for the shortlisting of candidates for the post of Secretary General (CM(2009)26rev).

16. These decisions are a follow-up to Recommendation 12³ of the report by Mr Juncker, Prime Minister of Luxembourg, presented to the Assembly on 11 April 2006, entitled “Council of Europe – European Union: a sole ambition for the European continent”.

4. Observations on the respect, during the current election process, of the rules and past practice governing the election of the Secretary General

17. The rapporteur should like to present observations on the following issues related to the current election process:

- the Committee of Ministers’ decision of May 2007 relating to the qualifications of the candidates (see paragraph 14 above);
- the possibility of shortlisting the names of candidates for the post of Secretary General;
- the adoption on 23 April 2009 by the Ministers’ Deputies of proposals (draft resolution) concerning the appointment of the Secretary General before the consultation of the Assembly on the subject through the medium of the Joint Committee.

4.1. The Committee of Ministers’ decision of May 2007

18. The criteria determining the choice of candidates for the post of Secretary General are laid down in clause 2 of the regulations of 1956. The question arises if this is a closed list of criteria which – as the regulations were hitherto adopted and amended by co-decision of the Committee of Ministers and the Assembly – can only be changed by agreement between both organs. If this was not the case, could the Committee of Ministers amend the criteria for the qualifications of candidates without proper consultation of the Assembly?

19. The election procedures since 1956 show that the Assembly has always been involved in the modalities for the elections of the three senior officers of the Council of Europe. The decision of May 2007 which is, as demonstrated during the current election process, of considerable importance, is the first case where the Assembly has given neither its assent nor been consulted. It is recalled that in the analytical part of his report, Mr Juncker (see paragraph 16 above) had stated “it would be useful for the Council of Europe –

3. According to Recommendation 12: “The Council of Europe should move, in electing its Secretaries General, towards choosing leading political figures, whose past work for democratic security has already given them a high and positive profile among their peers and the people of Europe. Ideally, and following the EU’s example, it should envisage electing someone who has already served as a head of state or government.”

particularly the Committee of Ministers and the Assembly – to review the criteria applied in selecting candidates for the post of Secretary General.” No such initiative was taken by the Committee of Ministers and they simply adopted a decision of May 2007 without prior formal consultation of the Assembly. At its meeting on 27 April 2009, the Committee on Rules of Procedure, Immunities and Institutional Affairs considered that this was a major issue and should therefore be mentioned in the draft resolution (see paragraph 4).

4.2. The possibility of shortlisting the names of candidates

20. Clause 5 of the regulations is silent on the possibility of shortlisting candidates and this would therefore not be against these provisions. However, the practice of the past election processes shows that:

- efforts by the Committee of Ministers to shortlist the names of candidates for the three senior officials of the Council of Europe have been very limited; with regard to the post of Secretary General, there was only one past initiative in 1957 which, however, was not followed up after the meeting of the Joint Committee; this means that in all elections for the Secretary General before the current one, all candidatures received were forwarded to the Assembly;
- the Assembly has regularly tried to avoid such shortlistings and sometimes reacted adversely if there were any initiatives to this end.

21. In 1955 the Assembly protested very strongly that, from the initial list of four candidates for the post of Secretary General, only one had been transmitted to the Assembly as the governments concerned had withdrawn the candidatures. The Bureau had urged the Committee of Ministers to submit all four candidatures to the Assembly, while finding it natural that the Committee of Ministers should, if it wished, express a preference. On that occasion the Bureau and the President of the Assembly drew the attention of the Committee of Ministers to the fact that it “is essential for the Assembly to have full freedom of choice in making the appointments for which it is statutorily responsible”. This conflict led to the elaboration of the above-mentioned regulations (paragraph 10). Moreover, a motion for the adjournment of the election was defeated by the Assembly by only a narrow majority.

22. In 1962 the Assembly managed, through action in the Joint Committee, to avoid the transmission to the Assembly of a single candidature for the post of Deputy Secretary General which had been envisaged at some point in time in the Committee of Ministers.

23. This supports the view that it is essential for the Assembly to have the widest possible choice between candidates for the post of Secretary General as was the case for all elections between 1964 and 2004.⁴

4.3. The adoption on 23 April 2009 by the Ministers’ Deputies of a draft resolution on the appointment of the Secretary General before consultation of the Assembly on the subject through the medium of the Joint Committee

24. Procedurally, the adoption of the draft resolution by the Committee of Ministers presents a problem in that the draft could be said to have no formal status. It is merely a draft for decision by the Committee of Ministers on 12 May 2009, after the meeting of the Joint Committee on 29 April 2009. This being said, the draft resolution is a clear indication of what could well happen with regard to the final decision on 12 May 2009. Ministerial sessions generally adopt the drafts prepared by the Deputies without amendments.

25. It is therefore important for the Assembly to make its views clear, hence the urgent debate. From the Assembly’s viewpoint, the Joint Committee consultation is the vital element in the election process. This is clear in clause 5 of the regulations. It gives the Assembly the right to receive a list of at least two candidates unless otherwise agreed in the Joint Committee. To a certain extent, the Joint Committee, which nowadays meets only at the level of the Ministers’ Deputies, would be short-circuited from the Assembly’s viewpoint if the Deputies defended a pre-established position.

26. In principle, it is entirely open for the Ministers’ Deputies to modify the proposed draft resolution on the election of the Secretary General. This could also be done by the Committee of Ministers at its ministerial session on 12 May 2009. But is this likely? Dialogue between the Ministers’ Deputies and the Assembly is critical in matters of such great importance for the Council of Europe as a whole.

4. In 1989 there was one candidate following an agreement reached in the Joint Committee; in 1957 the two candidates had been members of the same political group of the Assembly, but one of the candidates had no longer been a member of the Assembly; it is to be noted that in 1984 the third candidate had not been a politician.

27. During a meeting on 27 April 2009, the Chair of the Ministers' Deputies and the Chair of the Committee on Rules of Procedure, Immunities and Institutional Affairs also discussed the background of the draft resolution adopted by the Deputies on 23 April 2009. The Chair of the Ministers' Deputies stated that the decision to follow the recommendations of the Juncker report (paragraph 16 above) for the current election of the Secretary General was taken by the Committee of Ministers in May 2007. Furthermore, in a letter of July 2008 to the foreign ministers of member states, the then Chair of the Committee of Ministers, Mr Carl Bildt, stated how important the recommendations of Mr Juncker were for the current election. He wrote: "I therefore ask you to encourage candidates in our member states that have the required profile and competence. Following this, the Committee of Ministers will transmit to the Parliamentary Assembly of the Council of Europe a list of candidates who match that profile".

28. The Chair of the Ministers' Deputies confirmed that a legal opinion had been prepared for the Committee of Ministers by the Directorate of Legal Advice and International Law. The decision taken by the Deputies on 23 April 2009 to adopt the draft resolution followed this advice.

29. The Ministers' Deputies hold the view that it was important, by the adoption of proposals (draft resolution) on 23 April 2009, to make the Assembly understand, prior to consultation in the Joint Committee on 29 April 2009, that only two candidates met the criteria in the recommendations of the Juncker report.

30. The Chair of the Ministers' Deputies also stressed that the draft resolution of 23 April (2009) did not seek to place the two candidates in an order of preference but only listed them in alphabetical order. The Assembly would therefore have a genuine choice between the two candidates on the shortlist.

5. Conclusions

31. The Assembly must determine for itself whether such a shortlist represents the widest possible choice. Furthermore, while the legal and procedural provisions may have been respected so far in the election process for the Secretary General, important questions remain. There is, in particular, an absence of genuine dialogue between the Ministers' Deputies and the Assembly on major issues. Moreover, and this is the most important point, the Assembly would – if in the end only two candidatures were submitted to it – be deprived of the widest possible choice for the election of the Secretary General.

32. In the current political climate in Europe, the Assembly should insist that all procedures are beyond reproach. However well-intentioned the Ministers' Deputies may have been in drawing up the draft resolution to limit the choice to only two candidates, the perception may be that in some way the election process has not been as even-handed and transparent as is desirable.

33. The Assembly should therefore propose that:

- the Ministers' Deputies review their proposals (draft resolution) of 23 April 2009 in the light of the discussions in the Joint Committee on 29 April 2009;
- the Committee of Ministers at its ministerial session on 12 May 2009 adopts a resolution on the election of the Secretary General with a view to forwarding to the Assembly a list which will allow Assembly members to make the widest possible choice between candidates.

34. It is most important that both the Assembly and the Committee of Ministers are in agreement on the arrangements for the election of the Secretary General of the Council of Europe. In the view of the rapporteur, a constructive interaction between the Committee of Ministers and the Assembly is essential both for the efficient fulfilment of the Council of Europe mission and for ensuring that genuine dialogue between both the Committee of Ministers and the Assembly is a priority at all times.

Appendix 1 – Regulations⁵ relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Assembly having the rank of Deputy Secretary General⁶

1. Submission of candidatures

a. When a vacancy occurs in any of the three senior posts of the Secretariat General, appointments to which are made by the Consultative (Parliamentary) Assembly on the recommendation of the Committee of Ministers, or in the case provided for in clause 8.b below, candidates may be proposed to the Committee of Ministers:

- i. by one or more member governments;
- ii. by the Secretary General, in respect of the posts of Deputy Secretary General and Secretary General of the Assembly.

Furthermore, when the post of Secretary General of the Consultative (Parliamentary) Assembly falls vacant, or in the case provided for in clause 8.b, proposals may be submitted to the Committee of Ministers by one or more groups of Representatives to the Consultative (Parliamentary) Assembly; they should bear not less than five and not more than ten signatures.

The Secretary General may only propose candidates who are already permanent or temporary members of the Secretariat General.

Candidates from the Secretariat General may also be sponsored by one or more Member Governments, provided that in the case of the Deputy Secretary General or Secretary General of the Consultative (Parliamentary) Assembly the Secretary General has been previously consulted and has given his assent.

b. Member governments and Assembly Representatives shall send their proposals to the Secretary General, who will forward them, together with his own, to the Committee of Ministers.

2. Criteria determining the choice of candidates

The following criteria shall determine the choice of candidates:

- a. The recruitment of persons of the highest ability and integrity and suitability for the post to be filled.
- b. The qualifications and experience of persons already employed by the Council of Europe shall be taken into consideration, so that members of the Secretariat may have reasonable prospects of promotion.
- c. The desirability of ensuring an equitable geographical allocation of appointments among nationals of the member states subject to the overriding interests of efficiency. No office in the Secretariat shall be considered to be the prerogative of any particular member state.

3. Preliminary examination of candidatures by the Committee of Ministers

The Committee of Ministers shall examine the list of candidates. The latter may be summoned to an interview by the Committee itself or by a sub-committee appointed for the purpose.

4. Consultation of the Assembly by the Committee of Ministers

Before transmitting to the Consultative (Parliamentary) Assembly a recommendation for the appointment of any one of the three senior officials of the Secretariat General, the Committee of Ministers shall consult the Assembly on the subject through the medium of the Joint Committee.

5. Regulations adopted by the Committee of Ministers (43rd Meeting of the Ministers' Deputies from 3 to 6 December 1956) with the agreement of the Assembly, subsequently amended as to paragraphs 1 and 8 as a result of a proposal by the Assembly (Recommendation 289 of 23 September 1961), by the Committee of Ministers (107th Meeting of the Ministers' Deputies from 13 to 20 March 1962), with the agreement of the Standing Committee (Meeting of 30 March 1962).

6. By Resolution (49) 20 the Committee of Ministers, pending the amendment of Articles 36 and 37 of the Statute, authorised the Assembly to appoint, on the recommendation of the Committee of Ministers, a Chief of the Administrative Services (Clerk) of the Assembly, having the rank of Deputy Secretary General. In January 2000, this title was replaced by Secretary General of the Assembly, see Rule 64 of the Assembly's Rules of Procedure.

This consultation shall take place, unless otherwise agreed to by the Joint Committee, not less than thirty days before the date of the opening of the Session during which the Assembly will be called upon to make the appointment.

5. Nomination of candidates

- a. Unless it has been otherwise agreed after discussion in the Joint Committee, the Committee of Ministers shall draw up a list containing at least two names, which shall be submitted to the Assembly.
- b. In the case of candidates for the posts of Secretary General and Deputy Secretary General, the Committee of Ministers shall be free to list the names in order of preference, should it so desire.

6. Procedure in the Bureau

The proposals submitted to the Assembly by the Committee of Ministers shall be examined by the Bureau, which may summon candidates to an interview. The Bureau shall then transmit the proposals to the Assembly, indicating, if it thinks fit and where appropriate, its own order of preference and the order of preference of the Committee of Ministers with regard to the candidates.

7. Procedure in the Assembly

- a. The Assembly shall proceed to make the appointment.
- b. Voting shall be by secret ballot.
- c. An absolute majority of the votes cast⁷ shall be required at the first ballot and a relative majority at the second.

8. Term of office and possible re-appointment⁸

- a. The three senior officials shall henceforth be appointed for a period of five years.
- b. Not less than six months before the expiry of the term of any such official, the procedure laid down in the preceding clauses shall be set in motion; the official may be put forward again as a candidate in accordance with clause 1, and his term may always be renewed for a period specified in advance by agreement between the Assembly and the Committee of Ministers in the Joint Committee.

7. Only those ballot papers bearing the names of persons who have been duly entered as candidates shall be taken into account for the purpose of calculating the number of votes cast (Rule 35.8 of the Rules of Procedure of the Assembly).

8. This paragraph was altered as a result of Recommendation 289 of the Assembly, adopted on 23 September 1961 (see [Doc. 1326](#)) and the joint decision of the Committee of Ministers and the Assembly (see [Doc. 1431](#))

Appendix 2 – Draft Resolution CM/Res(2009) ... on the appointment of the Secretary General

(adopted by the Committee of Ministers on 12 May 2009 at the 119th Session)

The Committee of Ministers, under the terms of Article 36.b of the Statute of the Council of Europe,

Having regard to the Regulations relating to the appointment of the Secretary General, Deputy Secretary General and Secretary General of the Parliamentary Assembly having the rank of Deputy Secretary General;

Having regard to the decisions taken at the 117th Session of the Committee of Ministers (10-11 May 2007);

Having examined the four candidatures presented by the governments of Norway, Belgium, Hungary and Poland;

Having interviewed the four candidates;

[Having consulted the representatives of the Parliamentary Assembly in the Joint Committee,]

Decides to transmit to the Parliamentary Assembly, for appointment to the post of Secretary General, with effect from 1 September 2009, the following candidatures, listed in alphabetical order, with the names of the sponsoring governments in brackets:

- Mr Włodzimierz Cimoszewicz (Poland);
- Mr Thorbjørn Jagland (Norway).

Reporting committee: Committee on Rules of Procedure, Immunities and Institutional Affairs.

Reference to committee: Reference No. 3530 of 27 April 2009.

Draft resolution unanimously adopted by the committee on 27 April 2009.

Members of the committee: Mr John **Greenway** (Chairperson), Mr Rudi **Vis** (1st Vice-Chairperson), Mrs Maria Postoico (2nd Vice-Chairperson), Mr Egidijus **Vareikis** (3rd Vice-Chairperson), Mr Francis **Agius**, Mrs Marie-Louise **Bemelmans-Vidéc**, Mrs Anna Benaki, Mr Erol Aslan **Cebeci**, Mr Christopher **Chope**, Mr Andreas **Gross**, Mr Holger Haibach, Mr Gerd **Höfer**, Mr Serhiy **Holovaty**, Mr Ali Huseynov, Mr Kastriot Islami, Mr Ertuğrul **Kumcuoğlu**, Mrs Anna **Lilliehöök**, Mr Eduard **Lintner**, Mrs Ana Catarina Mendonça, Mrs Kristiina Ojula, Mr Paul Rowen, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Ellert B. Schram, Mr Karim Van Overmeire.

NB: The names of the members who took part in the meeting are printed in **bold**.

Secretariat of the committee: Mr Heinrich, Mrs Clamer.